VOL. IV.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 131

THE UNITED STATES OF AMERICA, PETITIONER

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL.

No. 132

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 5, 1941
CERTIORARI GRANTED OCTOBER 13, 1941

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JAMES A. MURPHY, residing at 433 West 24th Street, New York City, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Murphy, are you a married man? A. I am.

Q. Are you a member of Local 807? A. I am.

Q. How long have you been a member of that union? A. I think since January the 1st—or January the 22nd, 1937.

Q. Now, Mr. Murphy, before the spring of 1937, what occupation did you follow? A. Well, I followed quite a 5912
few occupations. I was driving, driving for Cowan, and I was a longshoreman, I was a salesman, and worked on ships as a fireman, assistant engineer—well, that goes back quite a ways.

Q. Have you a license to operate a truck in New York? A. I have.

Q. How long have you had that license? A. Since, I think it is, 1917 or 1918.

Q. Well now, do you know a witness who testified here on May 2nd named Jack Zohlman? A. I do.

Q. Do you know a witness who testified here on the same date called Ronald G. Carman? A. I do.

Q. Did you meet Mr. Zohlman? A. I did.

Q. Do you know about when the first time was that you 5913
met him? A. Well, I am not so good on dates, but it was around the summer time, I think, in 1937. Some time in the warm weather.

Q. Where did you first meet him? A. Well, do you want me to explain?

Q. No, just answer the question. A. At the Holland Inn.

Q. Did you meet him by appointment or by accident? A. He made the appointment to meet me.

Q. Through whom did he make the appointment? A. Through my brother.

Q. Your brother's name is what? A. George.

Q. Was he a resident of New York at that time? A. He was a resident of New Jersey, I believe.

Q. Where in Jersey? A. In Bridgeton.

Q. Did you know where Zohlman lived at that time? A. I didn't know Zohlman at that time. Never saw him before.

Q. Do you know since that time where Zohlman lives? A. Well, as far as—yes, I do. He lives in Bridgeton.

Q. Do you know whether or not Zohlman has or had
5915 about that time a trucking business? A. At that time?

Q. Yes. A. When I met him?

Q. Yes. A. I didn't know nothing about him.

Q. Well, did you have a conversation with him when you met him? A. I did.

Q. Who was present at the conversation? A. Oh, my brother George and Zohlman brought——

Q. You will have to hold up your voice. A. My brother George and Zohlman invited me in to the Holland Inn and naturally the bartender was there.

Q. Did you have a talk at that time with Zohlman? A. I did.

Q. Will you be good enough to tell the jury the substance of that conversation? A. Well, he brought me in and my brother introduced him to me and he said, "This is Jack
5916 Zohlman." So he says he is a truckman and he says he come in here to sign up with some union but he says he wants to sign up with 807. He said, "You are in the union Local 807?" I says, "Yes." So my brother says, "He wants you to work for him." And Zohlman cuts in and he says, "Are you a married man?" I said, "Yes." He said, "You look worried." I said, "I ought to be." He said, "Why?" I said, "I have got five children." So we began laughing. And he said, "I want you to go to work for me."

And he said, "Everything will be all right." So I said to my brother George, "Why does he want me to go to work for him?"

Q. Was this in the presence of Zohlman? A. This was in the presence of Zohlman. Zohlman said he wanted me to go to work for him. My brother George said, "Well, he is a pretty good fellow," and he said to Zohlman, "Go ahead and tell your story, Jack," he said to Zohlman. So Zohlman said to me, he said, "Listen, Jim"—he became very friendly with me—he says, "I have no contract with Pritchard," and he says, "Since Stewart has come in there I may lose my work and my truckers will be idle."

Q. Do you know who Pritchards were? A. Only through 5918
my brother working there.

Q. Did you know what kind of concern Pritchard's was? A. Just a manufacturer, as far as I was concerned.

Q. Did you know where their place of business was? A. I used their ketchup. It was on the ketchup bottle. Bridgeton.

Q. Did you know Stewart? A. I never saw him in my life.

Q. Did you meet him afterwards? A. I did meet him. I didn't meet him; he came on the scene after.

Q. How long after this conversation did you meet Stewart? A. Will I explain?

Q. How long after? About how long after? A. By explaining I could——

5919

The Court: No. Can't you give us the date?

The Witness: I am not so good on dates.

Q. Well, would you know what year it was? A. It was in 1937.

Q. Do you know what part of the year 1937? A. It was in the summer time.

Q. And at that time did you ascertain what Stewart's occupation was? A. Only through my brother. He told me that——

Q. All right. Well, now will you go on with your conversation with Mr. Zohlman, if you please? A. Well, he wanted me to go down to work for him and I said, "I don't know what the conditions are." I said, "I have been in unions all my life and I never did go on a job without finding out what the conditions are on that job." He said, "All right, I will fix everything up." I said, "In the first place, let me know what is going on and what to do." He said, he had trailers coming into New York City and I
5921 asked him did he have union men. He said, "That doesn't make any difference. As far as unions is concerned they are supposed to get not union wages but what I give them. I give them $5 and make them give me $2.50 back." So that gave me a thought in my mind that I better be careful with that fellow.

Mr. Ennis: I object to that. That is not part of the conversation.

The Witness: That is what he told me.

Mr. Ennis: I move to strike out the last remark as not responsive.

The Court: Strike it out.

A. (Continued) He said to me, "Will you go to work for
5922 me?" I said, "I don't know. I want to make sure just where I stand. I am not going to lose my reputation on account of you or anybody else, not even my brother." He said, "Will you go down there tomorrow?" I said, "I don't know. I will try to investigate. I will take a week or two or three weeks to investigate before I put myself in a spot where I will have a bad reputation for the rest of my life." So I did go down the next day or the day after—I forget just when it was—but I stayed on the corner. I

didn't go near those trucks. I didn't go to those trucks for two or three weeks.

Mr. Ennis: I move to strike that out as not responsive to the question as to the conversation.

The Court: Yes, strike it out. Strike out "I didn't go near those trucks."

Q. Where did you go the next day? A. The next day I went down there.

The Court: Down where?

The Witness: Down to Spring and Washington Streets. But I haven't finished with that conversation. 5924

He asked me would I take it under consideration to work for him. I said, "I don't know. I will let you know. If I am not going to be in a bad position I will go to work for you." He said that that was all right. He said, "Let the drivers know." So then the next day I went or the day after—I don't know which it was——

The Court: Well, what was at Spring and Washington Street?

The Witness: Pritchard's factory.

The Court: That is where you went?

The Witness: That was formerly their factory, and now it is their warehouse. 5925

The Court: Is that where you went?

The Witness: I didn't go to their factory; I went to the corner by the diner. I was across the street entirely away from there.

Q. You say you went to Spring Street the next day or the day after? A. The next day or the day after.

Q. Between the time you had the conversation and— A. I haven't finished that conversation yet.

He said to me, he says, "Go down." And I offered all kinds of objections why I shouldn't go down. I said, "My book may be behind a month or so." He said, "That is all right. You will be all right." I said, "Furthermore, I am trying to get away from this work. I don't want to do any heavy work. My foot is cut off over the knee stub. I haven't any foot." I said, "On account of my foot, I don't know. I may jeopardize somebody's life in the streets." He said, "You don't have to drive a truck. You don't have to unload a truck. Go down. My business is what I am considering." He said, "My business has got to run. If you can help me in any way I will appreciate it. I don't
5927 want you to drive, I don't want you to unload." I said, "Well, that I will take under consideration."

Q. Now, on the day that you got to Spring Street, did you see Mr. Zohlman on that day? A. I did not.

Q. Did you see someone there? A. Well, I was across the street. I saw the fellows on the platform.

Q. Did you talk to——

The Court: On what platform?

The Witness: On Pritchard's, the warehouse.

The Court: You were on the opposite side of the street?

The Witness: By the diner, and Pritchard's was on the east side of Washington Street.

5928 Q. Did you talk to anyone there that day? A. I did not, not that day.

Q. Well, after that, did you talk to anybody? A. I spoke to the——

Q. Yes or no? A. I did.

Q. And how long after your first visit to Spring Street opposite Pritchard's platform did you talk to somebody? A. Well, I spoke the next day.

Q. To whom? A. To the shipping clerk.

Q. Do you know what his name is? A. James Perry.
Q. What talk did you have with the shipping clerk?

Mr. Ennis: I object to that as immaterial, your Honor.

The Court: Overruled.

A. I told him the story that Zohlman told me and he told me the story of Jack Zohlman. If you want to hear that I can tell you that.

Q. Never mind. Did you tell Mr. Perry what you were doing there? A. I told him that Jack Zohlman made an appointment to come up and see me and he told me the circumstances and told Jimmy Perry that I didn't make 5930
up my mind yet till I would find out if there was any such thing as strikes or outlaws or what was there. I didn't know what was there. I had to find out for my own protection. I said, "Until I find out I am not going to do anything."

Q. Well, ultimately did you have any connection with Zohlman's trucks? A. Ultimately?

Q. Yes. A. Eventually?

Q. Yes, either one. A. Well, I had about two and a half or three weeks later, I think. I told the driver—of course, Jimmy Perry pointed me out to him at the corner and said, "That is the fellow that Zohlman picked out."

Q. Who was that fellow? A. Ronald Carman.

Q. Was his name Ronald G. Carman. A. I don't know 5931
what his middle name was. Ronald Carman.

Q. Did you have a conversation with Carman, the driver of Zohlman's truck out of Bridgeton? A. Yes.

The Court: Was it on that occasion?

The Witness: Which occasion?

The Court: You said two and a half or three weeks later.

The Witness: Yes, it was on that occasion he came over to speak to me.

Q. Did you accost him first? A. No, he came over to me.
Q. Will you tell us what the conversation was?

Mr. Ennis: May the place be fixed?
The Court: Yes, where was it?
The Witness: By the diner, Spring and Washington Street, where I was standing, across the way from the warehouse.
Mr. Cahill: Your Honor, may we have cessation of this laughter?
5933 The Court: I will fix that. Proceed.

Q. Was that opposite Pritchard's warehouse? A. That was on the other side of the street, opposite.
Q. All right. Will you please, Mr. Murphy, tell us the conversation as far as you recollect it between Carman and yourself? A. Well, Carman approached me and he said, "Are you the fellow that Jack Zohlman is going to put to work?" And I said, "Yes, I think so." So he said, "Well, are you going to go to work?" I said, "I have been trying to find out something. Jack should have explained that to you, what I was going to do." He said, "When are you going to go to work?" I said, "Will you go back and tell Jack that? Don't tell me. I am not
5934 working for Jack. You can tell him that after this week if I don't see anything wrong, as far as I am concerned, that I will be willing to go to work next week if he wants me to go to work."
Q. Well, between that conversation and the next week did you talk to Zohlman? A. I did not.
Q. And in the next week did you see Carman again? A. Well now, that is—the next week I saw Carman, yes.

Q. Did you have any talk with Carman the next week? A. Yes. I asked him, "Does Zohlman make any arrangement"——

Mr. Ennis: May we have the place fixed, your Honor?

The Court: Yes, fix the place.

The Witness: Spring and Washington, by the diner, opposite Pritchard's.

The Court: Now just a moment. You are not in a theatre.

And I ask the marshal to take notice of the persons who have been laughing and jeering and 5936
we will have them excluded from the room if it happens again. Proceed.

Q. Having met Carman at that point, did you have a conversation with him? A. I told him when he came over and said hello to me, he says, "Have you made up your mind?" I said, "Yes." I said, "You will have to tell Jack to make his arrangement that I am going to go to work for him and I have to be paid by him." He said, "All right, I will do that." I said, "I will work for him today, but if I am going to work for him I must be paid."

Q. Getting back to the conversation you had with Zohlman the first time that you met him, did Zohlman at that time tell you what your duties would be if you did go to 5937
work for him? A. The only thing he told me he was interested in was his business and he says if I could help him in any way that that was all he was interested in.

Q. Did he make an arrangement with you to load and unload his trucks? A. He told me I didn't have to. In fact, I didn't want to take the responsibility of driving a trailer through the streets at that time. I did drive previously to that with Cowan's but I didn't know on

account of my foot how long it was going to last or how long it was not going to last.

Q. What happened on the day you now speak about when you met Carman at Pritchard's? A. When I met Carman at Pritchard's—this was the last time he met me?

Q. Yes. A. Well, I worked with him.

The Court: That is the day you went to work?

The Witness: That was about—now let me see. It was about three weeks after I met Zohlman.

The Court: Well, it is the first day you went to work?

5939 The Witness: The first day I went to work, yes.

Q. Now you recollect, Mr. Murphy, that Carman testified here on May 2nd that he had started to unload his truck and that you would not help me and that he got into an argument with you because you would not help him and he said that you said that you did not have to help him. Do you recollect that testimony?

Mr. Ennis: I object to the characterization of the conversation as argument, your Honor.

The Court: No, I think that is in substance what the witness testified to. If there is any doubt about it you point out to him wherein counsel is in error.

5940 Mr. Ennis: My objection was as to the form, characterizing the testimony.

The Court: Let us have that question.

(Question read.)

The Court: I will sustain the objection to the question in that form. You may recall to his attention from the record the language which the witness Carman used and ask him whether there was any such conversation.

Mr. Murray: All right, your Honor. Will your Honor give me a moment to confer with the record?

The Court: Yes, of course I will.

Q. Page 1711 of the record. Mr. Murphy, do you recollect Carman being asked this question by the United States Attorney on May 2nd, this year, and his making this response:

"Q. What was said? A. He wanted to know if I had the money to unload.

"Q. What did you say? A. I had it and gave it to him.

"Q. Did you have any talk about it? A. I started to unload the truck and he would not help, and I got into an argument with him about that, and he said he didn't have to." 5942

Do you recollect that? A. I do.

Mr. Murray: I might call your Honor's attention to the fact that I used at least the same language in my question.

The Court: The difficulty was that you coupled it up conditionally.

Q. Did you have that conversation that I read to you from the record with Carman? A. Did I have that conversation? It was a similar conversation to that.

Q. Well, do you recollect in substance what the conversation was that you had with Carman? A. He wanted me to go to work and that was previously to the time that I started to work and I told him that "Jack knows the conditions" that I had told him when I met him. I had to find out for myself what the conditions was on this job before I went into it. 5943

Q. Did you tell Carman the conditions? A. The conditions of the job?

Q. Under which you would go to work. A. I didn't. I told him to find out.

Q. Did Zohlman tell you the conditions under which you were to go to work? A. Regarding the union you mean?

Q. Regarding your employment as to whether or not you were to load or unload trucks or any other duties. A. He told me in the beginning I didn't have to unload trucks or I didn't have to drive the truck.

Q. Did he tell you why he didn't? A. The only thing he said was, "Let the guys that is from out of town drive the trucks."

Q. And do you recollect Carman being asked this question on May 2nd and making this answer:

5945

"Q. What else did he say? A. He said he was there to see that nobody bothered me."

Did you have that talk with Carman? A. I did not.

Q. Now do you recollect, Mr. Murphy, that there was a conversation with Carman to the effect that you did not help him to unload for two or three weeks? Do you recollect that? A. I do.

Q. Is that a fact? A. That is the truth. I wasn't working.

Q. I beg pardon? A. I wasn't working for him.

Q. Do you mean that you were not getting paid? A. That is right, I was not getting paid. I was not employed. He wanted to employ me and I didn't want to go to work until I seen what the conditions were.

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Q. Are you able to fix the date when you did go to work? A. Outside of the summer time, no. I couldn't even tell you my children's birthdays.

Q. Well, when you did go to work were you paid? A. When I went to work I was not paid directly; I was paid eventually.

Q. Yes, but when you did go to work were you afterwards paid? A. I was.

Q. By whom? A. Well, sometimes the drivers paid me and sometimes they sent me the check in an envelope through the mail.

Q. Now, when you got paid for going to work did you help to unload the truck? A. When I got paid?

Q. Yes. A. For going to work?

Q. Yes. A. I did, yes. When I worked I got paid for it.

Q. What character of merchandise did Zohlman's concern truck? A. Do you want me to answer all of it?

Q. Yes. A. Well, if I answer this it might be mixed up. According to his testimony on the stand he said——

The Court: Never mind what he said. 5948

Mr. Ennis: I move to strike that out.

Mr. Murray: I consent that it be stricken.

Q. Mr. Murphy, my question is, what character of merchandise did Zohlman's concern truck? A. From Bridgeton he trucked canned goods. From Richmond Hill—not Richmond Hill—from Long Island he trucked cardboard paper boxes. Not back to the factory; he brought them back to Swedesboro and then to the factory.

Q. Where is Swedesboro? A. I think it is right outside of Bridgeton. He brought lumber from Black & Yates down to Dunnell or some other shipment.

Q. Where is Black & Yates? A. 157 Varick Avenue, Brooklyn, New York. In fact, two weeks ago he testified he got a load from Brooklyn. 5949

Mr. Ennis: I move to strike that out.

The Court: Strike it out.

Q. Was that lumber that he trucked from Black & Yates reloads after the load that came in on the truck in the morning had been delivered? A. After he brought the truck in we took a certain amount off at the warehouse.

We made perhaps two deliveries in Brooklyn or in New York and then we eventually went from Black & Yates and got the load of lumber and in fact one time a piece of lumber we had stuck out 12 feet beyond the end of the trailer at the foot of the Williamsburgh Bridge.

Mr. Ennis: I move to strike out the part about the lumber sticking out.

The Court: Oh, I will allow it to stand.

Mr. Ennis: May he place the time of this delivery?

The Court: Yes.

The Witness: That was in the summer.

5951

Q. Well, would it help you, Mr. Murphy, if the witness Carman said it was some time in the spring of 1937? A. That is the time. Around that time.

Q. Can you be any more precise about it than that? A. No, I can't.

Q. Do you recall that Carman testified here in substance that he, Carman, said to you that he was only getting $7.50 a trip and that you were getting $9.42 and that he was doing the work and that you were standing there watching him? Do you recollect that? A. I do.

Q. Was that the fact? A. It was. I wasn't working.

Q. Did that occur after you were paid? Did any such thing occur after? A. Before I went to work that occurred.

5952 Q. Well, he said further that when he made this statement to you you said that you didn't have to work? A. I wasn't working. I wasn't working. I didn't have to work.

Q. Now, how long altogether were you employed by Zohlman? A. I am employed up to the present time.

Q. Still working? A. I can't work; I have got to go to court.

Mr. Ennis: I move to strike that out.

The Court: Strike it out.

Q. You mean you were employed by him up to the time you came to court in this trial? A. I do.

Mr. Ennis: I object to the characterization of employment.

The Court: I will allow it.

Q. Now, did you meet a driver for Zohlman named Sheldon Carll? A. I did.

Q. Do you recollect when you first met him? A. Well, after I went to work. I never bothered with him before 5954
that.

Q. Do you remember how long after you first went to work for Zohlman that you met Carll? A. I don't quite remember now. It was right after I went to work for him though.

Q. Did you have a conversation with Carll in which you said that you were the man that was going to look out after the trucks while he was unloading? A. While he was unloading?

Q. Yes. A. He used to sleep on the truck.

Mr. Ennis: I move to strike that out. It calls for a yes or no answer.

The Court: Strike it out. 5955

Read the question.

Q. (Read) A. No, sir.

Q. Did you work on any truck belonging to Zohlman that Carll had brought in from Bridgeton, New Jersey? A. I did.

Q. Can you fix the time? A. Well, it was in the summer time of 1937.

Q. And when you worked on that truck that he had brought from Bridgeton who unloaded the truck? A. I did.

Q. What did he do? A. Most of the time he slept on the truck. Other times he would go in and talk in the office. Sometimes he would come out and give a hand. Once in a while he would give me a hand.

Q. Did you get paid by Zohlman for working on a truck with Carll any time in the spring of 1937—— A. I did.

Q. —in which you did not assist in the unloading? A. No, I did not.

Q. Now, when you met Mr. Zohlman, as you related, you
5957 testified you had a conversation with him. Do you recollect on May 2nd Mr. Zohlman in this court being asked this question and making this answer: This question relates to a conversation between your brother and Mr. Zohlman in your absence.

"Q. What did you say to him"—"you" means Zohlman —"and what did he say to you at that time? A. Well, he told me there wouldn't be any more outside Jersey trucks be allowed in New York unless they had a New York man."

Did you have any such conversation with Zohlman? A. I did not.

Q. Do you remember this question being asked Zohlman in this court and his making this answer——

Mr. Marks: What page, Mr. Murray?
5958 Mr. Murray: Page 1730.

Q. "Q. What did you say? A. Well, he said they were stopping them and I said, 'Well; I want to play safe. I want to get a New York man and if you will work for me, why, I would like to have you.' "

A. He wanted me to work for him, yes.

The Court: No. The question was if you had that conversation.

The Witness: Read it again.

Q. (Read) A. Yes, I remember that conversation.

Q. Did that take place? Did that conversation take place? A. At the Holland Inn.

Q. When you worked for Zohlman did you work every day in the week outside of Sunday? A. No.

Q. In the period from the spring of 1937, say, up to the winter of 1937, on an average of how many days a week did you work? A. Well, when I got big weeks I got three days. When I got small weeks I got from one to two days.

Q. Was there any arrangement between you and Zohlman whereby you would hold yourself in readiness for six days a week if his trucks came into New York? A. Well, he had to stay in because—— 5960

Mr. Ennis: I move to strike that out.

The Court: Strike it out. Just one moment. This question can be answered very simply. Just listen to it.

Q. (Read) A. Yes.

Q. Now will you tell the jury what that arrangement was, if you please? A. Well, one time he sent me a telegram.

Q. Well now, try to fix the time, if you can. A. That was in the summer time.

Q. 1937? A. 1937. And the load was going to Austin, Nichols. In fact, it was two loads I think at that time, and I happened to be out at the time. I took my kids out 5961 for a walk to the park.

Mr. Ennis: I move to strike that out.

The Court: Strike it out.

A. (Continued) And when I came back there was a note in the letterbox, but the other children in the house had pushed it down. I couldn't get it.

Mr. Ennis: I move to strike that out as not responsive.

The Court: I will allow that. Kids do that.

A. (Continued) They pushed it down in the letterbox so that I couldn't get it and I had no key; my wife had the key. So by the time she came home it was half-past ten or eleven o'clock, and the telegram office where I live closes at half-past ten. And the next morning I walked to Fifth Avenue and 25th Street and tried to get it and stayed there from six o'clock in the morning waiting for the telegram office to open, and I didn't get that telegram until eight
5963 o'clock, and by the time I got to Austin, Nichols' place it was about half-past eight or nine o'clock. I explained it to him.

By the Court.

Q. To whom? A. Zohlman.

Q. Was he there? A. He came in later.

Q. The same day? A. No, about a month or two later I told him that I had missed the telegram because I thought that on account of being late there would be some trouble about it. So he says, "That is up to you. You have got to be there to get the telegrams. If you don't get them you have got to stand the responsibility."

5964 *By Mr. Murray.*

Q. Mr. Murphy, I am trying to find out from you for the information of the jury whether or not you had any arrangement with Zohlman whereby you would hold yourself in readiness, and if you did, what arrangement was made. A. I had to stay in 24 hours a day waiting for those telegrams. He never mentioned any special time, morning, noon or night.

Mr. Ennis: I move to strike it out.

The Court: Strike it out.

Q. Did he ever tell you he was going to send you telegrams? A. No.

By the Court.

Q. How did you know you were going to get the telegram if he didn't tell you about it? A. He just sent them to me.

Q. That is the reason you were not home? Because he didn't tell you about it? A. No, he didn't tell me nothing about it. 5966

Q. So you were not expecting this telegram? A. No, I was not.

By Mr. Murray.

Q. After you got this delayed telegram after 8 o'clock in the morning on the occasion you have testified to, then did you make any other arrangements with Zohlman whereby you would be notified when your services were required on one of his trucks? A. The only arrangement I had——

The Court: No. Your own counsel has just asked you a very simple question. Were there any arrangements made after the occasion when you failed to get the telegram with respect to being notified? 5967

The Witness: No, no arrangements.

Q. Well, to illustrate, this Monday morning how would you know whether or not you were going to work for Zohlman on Monday morning? A. I wouldn't know. I would have to go down to the warehouse and find out if they were

coming in and if they were not coming in I would have to go home and see if any telegrams came.

Q. And if no telegrams came on Monday morning or Monday afternoon would you work for Zohlman on that day? A. No.

Q. Would you be paid? A. I would not.

Q. If a Zohlman truck were coming in on Tuesday morning was there any method by which you would be advised of that fact?

Mr. Ennis: I object to it as hypothetical, your Honor, and repetitious.

5968 The Court: It is, but I think I will allow it under the circumstances.

A. The only way I would know is by telegram or if the shipping clerk happened to know and he told me. Otherwise sometimes I would have to wait in for a telephone call from him.

By the Court.

Q. Well, it was just pot luck whether you would get a telegram or not? A. I would have to wait and see.

Q. That is just what I say. It was just a matter of luck whether you would get any word or not? A. That is right.

5970 *By Mr. Murray.*

Q. What is the highest number of days you worked a week for Zohlman? A. In three years I think I made three full five-day weeks—not full weeks; five-day weeks.

Q. On the average what was the greatest number of days that you worked in any one week? A. On an average?

Q. Yes. A. Over the period of three years?

Q. Yes. A. Well, I averaged there two or three days a week.

Q. Now, if you worked two days for him did you work for anybody else the other four days? A. No.

Q. Why not? A. I have to wait for him.

Mr. Ennis: I object to that as improper.

The Court: Sustained.

Q. What did you do the other four days? A. I had to stay in the house and wait there, wait till I found out what he was going to do.

Q. Would you be paid for the other four days? A. No.

Mr. Murray: Your witness.

5972

Cross examination by Mr. Cahill.

Q. What is the date of this first conversation you had with Zohlman? A. I think it was in the summer time. The exact date I don't know.

Q. What is your best recollection as to the month? A. I have no idea what the month was.

Q. Was it in June, do you recall? A. I don't know; I don't know exactly the month.

Q. Was it in the early summer or the late summer? A. Well, it was around June. I don't exactly know what time; around June. It must have been the early summer if it was around June.

Q. June of 1937, is that right? A. It is around that time. 5973

Q. Now, what was your employment at the end of 1936? A. At the end of 1936 I think that I was working for Cowen's.

Q. What were you doing there? A. Driving.

Q. Driving a truck? A. Yes.

Q. And how long were you with Cowen's? A. Oh, about two or three months, I think.

Q. When did you leave Cowen's? A. It was around 19—around 1937—the beginning of 1937.

By the Court.

Q. Were you there over the Christmas holidays? A. I think that I was there before the Christmas holidays.

Q. Did you leave before the Christmas holidays? A. I think I did.

Q. Or after the Christmas holidays? A. I think it was before—no, it was after. That is right, it was after the Christmas holidays.

5975 *By Mr. Cahill.*

Q. In the early part of 1937 you left Cowen's? A. Yes, the early part.

Q. You say you had been in Cowen's a few months? A. About two months; something like that. I wasn't there very long.

Q. Where were you employed just before that? A. I wasn't employed.

Q. For how long a period were you in his employ? A. About two or three months, I think. Something like that.

Q. Where were you employed before that? A. West End Distributing Company.

Q. What were you doing there? A. I was a salesman.

5976 Q. What were you selling? A. Well, everything they had. Liquor—beer at that present time. Not liquor; beer.

Q. How long were you selling beer for them? A. Well, on and off about a year or a year and a half I guess. Something like that. That is, on and off; it wasn't continual work with me at that time.

Q. Was it more on than off or more off than on? A. I don't know.

Q. What is your best recollection? A. I couldn't follow your question right away.

Q. Well, take your time. Did you work more often than not during that period of time? A. I don't know.

Q. Who was your superior there? A. My superior?

Q. Yes; what was your boss's name? A. A man by the name of Flynn.

Q. What is his first name? A. William, I think.

Q. When did you first start to work there? A. I have no idea.

Q. What is your best recollection as to when you started to work there? A. I don't know.

Q. What year was it? A. I don't know. If I told you any year I may be telling you a lie, so I am not going to tell you any year. It was before 1937; I know that. 5978

Q. It was before 1937? A. Yes. It may have been 1935 or 1936, but I don't know which one to tell you.

Q. You worked there on and off? A. That is right.

Q. Was that a commission job? A. That is right.

Q. And did you quit that job three months before you went to work for Cowen's? A. Something like that; two or three months.

Q. And on what did you live for the two or three months after you quit this commission job selling beer and before you started to drive for Cowen's? A. I didn't live on anything. I didn't make no commission. My wife was working then.

Q. What did you make? A. I didn't make anything. I was trying to sell beer for a year or two years. I didn't make nothing. 5979

Q. When did you have this injury to your foot? A. You want the year?

Q. Yes. A. About 1911. It is about 1911, 1912, or 1913. Around that time.

Q. When did you say you first got your chauffeur's license? A. In 1918 I think. I think that is when it was.

Q. In 1918 you first got your chauffeur's license. In

addition to the job at Cowen's in 1937 you had other jobs driving trucks between 1918 and 1937? A. I did. I made a mistake before. Before Cowen's I worked in the brewery's union. That is right. That was Local 97. What am I talking about? That was before Cowen's.

Q. You were working for whom? A. Ross & Flanagan Brewery.

Q. You were driving there? A. I drove and inside both.

Q. What was the date you worked for Ross & Flanagan Brewery? A. That was, I think, 1936 or 1935.

Q. That was after the job selling beer? A. No, that was before the job selling beer.

5981 Q. It was before the job selling beer? A. Yes.

Q. How long did you work for? A. About a year or so; a year and a half.

Q. Now, you joined Local 807 in January, 1937, did you not? A. That is right.

Q. Was that before or after you quit the job with Cowen? A. That was—I had to be in the union to work for Cowen.

The Court: No, no. Strike that out.

Mr. Cahill: I move to strike that out.

Q. Just answer my question.

By the Court.

5982 Q. Was it before or after you left Cowen? A. That I was in the union?

Q. That you joined the union.

Mr. Cahill: That you joined the union.

A. That was after I was in the union, wasn't it?

Q. I don't know. A. I had to be in the union to get the job.

Mr. Cahill: May I have an answer to the question?

Q. You testified that you left Cowen's employ in the early part of January—the early part of the year 1937, A. January?

Q. You said the early part of the year? A. It was the early part of the year; it wasn't January.

Q. I asked you if you were there during the Christmas holidays and you said you were. A. That was afterwards.

Q. You said you left right after the first of the year. Now, the question is did you join 807 before you left Cowen's employ or after you left Cowen's employ? In other words, were you working for Cowen's when you joined the union, Local 807? A. No, I was in the union. 5984

Q. Before you went to work for Cowen? A. Sure. That was February or March.

By Mr. Cahill.

Q. Now, who proposed you for membership in 807? A. Well, I don't know. I put an application in.

Mr. Cahill: Now, please, may I have that stricken out and may I have an answer?

The Court: Strike it out. He says he doesn't know.

5985

Q. Isn't it a fact that Willie Campbell proposed you for membership in 807? A. It is not.

Q. When for the first time did you meet Willie Campbell? A. Well, I guess I was in the union about four months before I saw him—wait a minute now. Three or four months; something like that.

Q. Three or four months before what? A. After I was in the union.

Q. That would be around April, 1937? A. Around that. April or May. Something like that.

Q. Now, this Cowen Company that you worked for, were they over-the-road truckers? A. They were.

Q. And where was their point of origin? A. Tenth Street and Washington.

Q. Where did they come from into New York? A. Baltimore, Pennsylvania towns; mostly Baltimore.

Q. From whom did you get your job there? A. I went down and shaped on that job.

Q. Well, to whom did you talk about getting work? A. I don't know the man's name now. He was a little thin
5987 fellow there. He had charge of it.

Q. Can you give us the name of anybody down there that you did talk to about getting a job? A. No. You don't have to talk to anybody; you just shape as a driver.

Mr. Cahill: I move to strike that out.

The Court: Strike it out.

Q. Can you give us the name of anybody that you talked to at Cowen's about getting a job? A. No.

Q. Now, reverting to the conversation in June, 1937, with Zohlman, how long had you been out of work at that time? A. I don't know.

Q. Well, what is your best recollection as to how long you had been out of work? A. I don't know. I don't know
5988 how much it is.

Q. Will you please think and give me your best recollection of how long you had been out of work when you were having your first conversation with Zohlman? A. I don't know.

Q. Was it a matter of a month? (No answer.)

Q. Was it as much as a month? A. I don't know.

Q. Was it less than a month? A. I don't know.

Q. Well now, you testified on direct examination, did you not, that you were the father of five children? A. That is right.

Q. On what were those five children being supported during this time that you were out of work before you talked to Zohlman?

Mr. Murray: I object to that, if your Honor pleases.

The Court: I will sustain the objection to the form of the question.

Q. Now, after you had this first talk with Zohlman you testified that you took three weeks to investigate the question whether you would work for him or not; isn't that true? A. That is right. 5990

Q. Now, you testified on direct examination, did you not, that Zohlman told you in the first conversation that you would neither have to drive a truck nor help to unload a truck? A. What did you say? You were turning around.

Q. (Read) A. That is right.

Q. Will you tell us what jobs there are on a truck, that is, its operation, other than driving it or unloading it? A. Well, there is such a thing as an associate driver, isn't there?

Q. Well, is an associate driver an honorary position or does he actually drive? A. He drives if it is necessary.

Q. Didn't you tell us Zohlman told you in the first conversation that you would not have to drive? A. That is right. 5991

Q. Did he suggest to you that you might become an associate driver? A. Did he suggest?

Q. I am taking your own expression. Did Zohlman say to you that you might become an associate driver? A. No, he didn't.

The Court: Recess for five minutes.

(Short recess.)

By Mr. Cahill.

Q. (Last question read.) A. No.

Q. Now, continuing that conversation in which Zohlman said, according to your testimony, that you neither had to drive nor had to unload, tell us what did he say your duties were to be on the truck? A. Well, he didn't necessarily say I had to go on the truck. All he wanted——

Mr. Cahill: If your Honor please, I move to
5993 strike it out.

The Court: Strike it out.

The Witness: All he——

The Court: Well, did he say anything to you with respect to what duties you were to perform if you went to work for him?

The Witness: Well, he told me that he was in Bridgeton and he had no representative at all in New York here, and that his business relied on his trucks keeping running—business keep going.

Mr. Cahill: I press the question.

Q. Just what were your duties to be as outlined according to you in this first conversation with Zohlman? A. My duties?

5994 Q. Yes. A. He didn't tell me any duty outside of being his representative in New York.

Q. Well, what did he say about your being his representative in New York? A. I just told you and you had me stopped.

Mr. Cahill: I move to strike it out.

The Court: Strike it out.

The Witness: His business depended upon it.

Q. His business depended on it? A. His trucks keeping moving.

Q. Well, did he say anything about his trucks not being kept moving? A. Well, he told me that the position he was placed in, that he couldn't take any chances on anything stopping his trucks, because the new owner of the concern was looking for a chance to put him out.

Q. Well, what was said about his trucks being stopped? A. About his trucks being stopped?

Q. Yes? A. In that first conversation?

Q. Yes. A. Well, he told me that his trucks were stopped by 282 and that he wanted to get into 807.

Q. What else did he say about his trucks being stopped? 5996
A. That his trucks had to keep moving.

Q. What else did he say? A. Well, that his business depended upon it, that his trucks keep moving, that he couldn't give the fellow who employed him a chance to give him an excuse for putting him out, any excuse at all. It wasn't necessarily his trucks not running; he was looking for any excuse to put him out at that time.

Q. What did you say? A. I didn't have nothing to say. He did almost all the talking.

Q. Didn't you say anything? A. Not very much.

Q. Well, what did you say? A. Well, I told him I would have to take two or three weeks to find out what my position was before I took any chances on my reputation, of losing it on account of him.

Q. Your reputation as what? A. As a man that has been 5997
in the union for 22 years and I didn't want to lose it just on account of working for him, if I happened to make a mistake, and if there was anything wrong on his particular job. If I walk into that job without knowing where I was walking that would be the last of my union status.

Q. Well, thereafter you went down and watched his trucks being loaded and unloaded, is that true? A. I went

down there not to watch his trucks to be loaded and unloaded; I went down there to see what the conditions were, if there was any such a thing as a condition where he was in wrong or something; where it would put me in wrong too.

Q. I press the question: Did you watch his trucks being loaded and unloaded? A. I was down there. I wasn't down there to watch them; I was down there to see what the condition was.

Q. Will you just answer my question, please? Did you go down there to see his trucks being loaded and unloaded? A. No, I didn't. I saw them unloaded.

5999 Q. You saw them unloaded? A. Unloaded.

Q. Did you do that every day for three weeks after your first conversation with Zohlman? A. I did not.

Q. How many times did you go down to see his trucks unloaded? A. Well, in three weeks.

Q. Yes. A. Maybe 6 or 7 times.

Q. Where did you stand while these trucks were being unloaded? A. By the diner, Spring and Washington Street, on the opposite side to Pritchard's Warehouse.

Q. When did you start working for Zohlman? A. The date I don't know.

Q. What is the best approximation you can give us to the date? A. I couldn't give it to you.

Q. Well, what month was it in? A. I couldn't exactly tell you the month.

6000 Q. You said you talked to him in June of 1937 for the first time? A. No, I didn't. I said around that time.

Q. Around that time? A. Yes. I don't know exactly what month it was.

Q. Now, was it before or after the alleged contract with 807 was signed by Zohlman? A. That I talked to him?

Q. No. That you went to work for him. A. I worked for him before the contract—— No; when he signed the contract I worked for him.

Q. Was it the very day the contract was signed? A. Well, that I don't know.

Q. Well, what is your best recollection on it? A. I wasn't there when he signed the contract. I don't even know whether he signed a contract or not, only from his own words; he told me he did sign a contract.

Q. Is it your recollection that he told you that before you went to work for him? A. He said he was going to sign it.

Q. Will you please answer the question? Is it your best recollection that Zohlman told you he had signed a contract before you went to work for Zohlman? A. I couldn't exactly tell you. Is my recollection that he signed the contract before I went to work for him? 6002

Q. That is right; that is the question. A. Well, he told me he was going to sign it in the Holland Inn, when I first met him.

Q. Will you please answer my question if you can? Is it your best recollection that Zohlman signed the contract before you went to work for Zohlman? A. I don't know. I don't even know if he signed the contract yet. I never saw the contract.

Q. Now, do you know a man named Darcy? A. I do. I did.

Q. Did Darcy work on the Zohlman truck too? A. He did not.

Q. Was Darcy a member of Local 807? A. I don't know; I couldn't exactly say. I think so. 6003

Q. Let me show you Government's Exhibit 51 in evidence and ask you if you can tell us in whose handwriting that is written. A. I couldn't.

Q. Do you see that second name, Edward Darcy? A. Yes.

Q. With the figure 2 next to it? A. Yes.

Q. Do you know that man? A. I don't know him. He is dead.

Q. That is not my question. Did you know him at the time? A. I knew Eddie Darcy a long time.

Q. I press the question: Was Darcy a member of 807 or not? A. I don't know.

Q. Well, did Darcy work with you on the Zohlman trucks? A. Not with me.

Q. Did he work on the Zohlman trucks while you were working on them? A. No.

Q. Never did? A. Not with me.

Q. I am not asking you with you necessarily; I am asking you did he work on the Zohlman trucks during the time you worked on them? A. Well, you are asking me to an-
6005 swer a question I can't answer.

Q. If you can't answer it just say so, and I shan't press the question. A. I don't know.

Q. Did you ever have a conversation with Darcy about working on the Zohlman trucks? A. I did not.

Q. Had you had any conversation with your brother about working for Zohlman prior to the first conversation with Zohlman? A. I did not.

Q. How long had it been since you had seen your brother before you saw him on the occasion of the first conversation with Zohlman? A. I couldn't really tell you that.

Q. What is your best recollection? A. I have no idea.

Q. Was it a month or a year? A. I think it was quite a long while.

Q. Was it a year? A. I don't know; I don't know ex-
6006 actly how long it was, because the last time he had been——

Q. No. Can you just answer the question? A. I am just trying to figure it out myself.

Q. Give us your best recollection. A. I don't know.

Q. I press the question: Was it as much as a year since you had seen him? A. It might have been.

Mr. Cahill: That is all.
The Court: Any redirect?
Mr. Murray: That is all, Mr. Murphy.
(Witness excused.)

JOHN GAUGHAN, residing at 283 Patchen Avenue, Brooklyn, New York, called as a witness in behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Gaughan, are you a married man? A. I am. 6008

Q. Are you a member of Local 807? A. I am.

Q. How long have you been a member of that union? A. Since around 1934.

Q. Before 1937 what work did you do? A. Chauffeur.

Q. Whom did you work for? A. Well, I worked extra for Novick Transfer, and before that I worked for George Transfer from Baltimore.

Q. When you worked for these concerns were you driving a truck? A. That is right.

Q. Did you do any work before you drove a truck? A. Well, I was a funeral chauffeur.

Q. For whom? A. Jerry J. Cronin, Brooklyn.

Q. How long did you work for Mr. Cronin? A. About two years. 6009

Q. Now, do you know John Palmer, who conducted a trucking business out of Millville, New Jersey? A. I do.

Q. When did you first meet Mr. Palmer? A. Oh, some time around 1937; around the spring of the year.

Q. And do you know where you first met him? A. At Novick Transfer.

Q. Did you have a talk with Mr. Palmer at Novick Transfer? A. Well, I was introduced to him——

Q. Did you? Yes or no. A. Yes.

Q. Were you introduced to him? A. I was introduced to him there.

Q. By whom? A. By the dispatcher there, Paul Novick.

Q. You mean that Paul Novick was the dispatcher for Palmer? A. No; for Novick Transfer.

Q. And at the time that you met Mr. Palmer were you working for the Novick Transfer? A. As an extra.

Q. Will you tell us what conversation you had with Mr. Palmer when you met him at Novick's Transfer? A. Well, I was introduced to him there, and he told me he wanted to put a man to work in New York and he asked me if I had any selection. I told him it was up to him to
6011 pick whoever he wanted to work on his truck. So he told me, "O. K. Monday morning you start working for me."

Q. Before that time had you seen any of Palmer's trucks? A. No, I never did, that I can recall.

Q. Did you ever stop any of Palmer's trucks? A. I never did.

Q. Did you go to work for Palmer? A. The following week. I think it was Monday or Tuesday.

Q. What kind o' truck did Palmer's drivers operate? A. Tractors and trailers.

Q. Do you know how many tons? A. Well, they carried about anywhere from 10 to 15 tons of freight.

Q. Do you know how many tons the truck was? A. Well, I guess around 18,000 pounds.

6012 Q. When you first went to work for Palmer, do you recollect the name of Palmer's chauffeur that you worked with? A. I think it was a fellow by the name of Otto.

Q. Did you ever work with a chauffeur employed by Palmer named Edward Warren? A. I did.

Q. Do you know whether or not that was the first chauffeur that you worked with? A. I am not sure about whether he was the first one or not.

Q. Exactly what kind of work did you do in relation to Palmer's trucks? A. Well, I drove the trucks to dif-

ferent distilleries to deliver bottles, wineries; delivered insulators down on the water-front to different piers.

Q. Did you drive? A. I drove.

Q. Did you load or unload? A. Well, I done most of the unloading.

Q. What time were you accustomed to go to work in the morning on the truck? A. 8 o'clock in the morning.

Q. Did you unload more than one truck when you worked for Palmer? A. Sometimes two or three trucks a day.

Q. And up to what hour did you work in the afternoon? A. Well, some days it may be four o'clock; sometimes after five. 6014

Q. You met Mr. Palmer and you were introduced by Mr. Novick: Did you have any talk with Mr. Palmer about wages? A. Well, yes. He made an agreement with me that if I met his trucks at that time he would give me so much a week.

Q. How much a week? A. He told me that if I worked two or three days a week he would pay me the amount of $35 for two or three days, and that was all, and if the trucks weren't in at 9.30 in the morning that I shouldn't look for them; they wouldn't be in.

Q. Now, after that did you have some other arrangement with Mr. Palmer? A. Yes. The trucks started to come in about four days a week.

Q. Yes? A. And he increased the amount to $45. 6015

Q. Now, did you hold yourself in readiness six days a week to drive the trucks? A. I did.

Q. Have you any recollection on an average of how many days a week Mr. Palmer's trucks came in to New York with their loads? A. Well, it all depended on how the orders went down to the factory in South Jersey.

Q. Well, do you know whether or not his trucks came in to New York five days a week on the average? A. Only around the Christmas holiday.

6016 *John Gaughan—For Defendants—Direct—Cross.*

Q. Did they ever come into New York six days a week? A. Sometimes, yes, sir, I have seen them come in.

Q. Did you work on them when they came in six days a week? A. Yes, I did.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. Mr. Gaughan, you joined Local 807 in 1934? A. Around that time.

Q. When did you go to work for the Novick Transfer?
6017 A. I would say I worked for Novick Transfer, I think it was around May of 1937.

Q. That is when you started? A. About that time.

Q. How long did you stay with the Novick Transfer? A. Oh, about a month, I guess; two months; something around that.

Q. June or July, 1937? A. No. Wait a minute; around March, I think.

Q. You went to work in March? A. Some time in there I know.

Q. Take your time now and think. When did you start there at the Novick Transfer? A. I think it was March.

Q. And you worked two or three months? A. About a month.

Q. About a month? Leaving there some time in April,
6018 you say, 1937? A. Around that.

Q. Now, tell me, was that an over-the-road company too? A. From Winchester, Virginia.

Q. Winchester, Virginia? You mentioned the George Transfer Company of Baltimore. A. George Transfer.

Q. When did you start working for them? A. Some time in 1936.

Q. That was earlier than Novick? A. Yes.

Q. How long did you work for the George Transfer Company? A. I should say about a year.

Q. When did you start in 1936, do you recall? A. It must have been around January or February; some place in there.

Q. You started in January or February, 1936, and left there in January or February, 1937, is that right? A. Something like that.

Q. Now, you told Mr. Murray you worked for the Cronin Funeral Parlors for two years? A. About that time.

Q. What were those years, please? A. I would say around 1935—1934 and 1935.

Q. 1934 and 1935? A. Yes. Around that time. 6020

Q. When did you leave Cronin? A. I don't remember the exact date.

Q. Well, can you recall whether it was the early part of 1935 or the latter part of 1935 that you left Cronin's employ? A. I think it was about the spring of the year; something like that.

Q. What did you do between the spring of 1935 and January or February, 1936? A. I was sick there for quite a while.

Q. Aside from the illness— A. I didn't do nothing at all.

Q. Nothing at all? A. Nothing at all.

Q. You say you joined 807 in 1934? A. That is right.

Q. Had you ever done any truck driving up to that time? 6021
A. Previous to working for Cronin I did, yes.

Q. You were working for the Cronin Funeral Parlors at the time you joined 807, isn't that true? A. Yes, that is right.

Q. Who proposed you for membership in Local 807? A. I think I went up there myself.

Q. Well, did you know anybody up there before you went up? A. I didn't know a soul up there.

Q. Did anybody propose you for membership? A. Not that I can recall, no.

Q. Well now, how did you get this first over-the-road job at George Transfer Company of Baltimore, Maryland? A. Well, there was a solicitor in there I knew, a freight solicitor, and I was out looking for work. I was standing around the corner.

Q. What corner were you standing around? A. On LeRoy and Washington Street.

Q. How long had you been standing around that corner before you went in to see the solicitor for the George Company? A. I didn't go in to see him. He went out
6023 and picked up a fellow on the corner when he wanted a man.

Q. Who else used to stand on that corner? A. Well, whoever just happened to be there.

Q. Tell us the names of some you recall who used to stand there. A. I don't remember any of the fellows there at that time now.

Q. Take a moment and think, if you will, and give us the names of those who used to stand on that corner with you. A. You got me; I don't know.

Q. Well, how many used to stand there? A. Well, there might be two or three fellows around there in the morning. Maybe there might be more.

Q. For how long a period of time had you been ac-
6024 customed to doing that? A. Just about a month or so.

Q. You can't recall the names of any persons who used to stand around that corner with you during that period? A. No. I never bothered with any of the fellows around there.

Mr. Cahill: I move to strike it out.

The Court: Strike it out. Answer yes or no.

The Witness: No.

Q. During 1937 you worked for Palmer, is that right? A. That is right.

Q. Now, were Palmer's loads straight loads or miscellaneous loads? A. Some were straight loads; some were miscellaneous.

Q. Which preponderated? Which were in the majority? Did he have more straight loads or more miscellaneous loads? A. Well, he had more or less straight loads.

Q. Now, how long did it take you to unload a straight load from one of Palmer's trucks? A. Well, that all depended on the delivery, where we were to go to.

Q. Well, let us assume that the delivery was on the west side of Manhattan and it is a straight load: How 6026
long would it take you to unload one of his trucks? A. Well, take down on one of the piers there, it might take a half-day or longer.

Q. What is the quickest you have unloaded one of Palmer's trucks? A. About three hours.

Q. Did you during this period in 1937 when you were working for Palmer work for anyone else? A. One fellow that carried Palmer's freight.

Q. Who was that? A. Snowhite & Gerson.

Q. Did you receive separate compensation from the firm of Snowhite & Gerson during the period that you worked for Palmer? A. I worked for them days that I didn't work for Palmer.

Q. I press the question: Were you paid by Snowhite 6027
& Gerson for the work that you did for them during this period? A. Yes. Some days that I worked for them.

Q. At what rate did they pay you? A. $9.42.

Q. You said a moment ago that Snowhite & Gerson carried Palmer's freight, is that true? A. Yes.

Q. Was it your testimony on direct examination that during this period you were being paid by Palmer? A. That is right. To handle his trucks. Nobody else's.

Q. At any time you handled anything of his on Snowhite & Gerson's trucks you got paid separately for that? A. Off Snowhite & Gerson.

Q. From Snowhite & Gerson? A. Yes.

Q. How did you come to work for Snowhite & Gerson? A. His drivers met me at Novick's terminal some mornings there; some mornings they met me at Whitehall, Tatum's warehouse in Varick Street.

Q. Was that just an accident? A. No. They came up there and asked me to go to work for them. So if I wasn't working, if I wasn't working I would work for them, but if I was working, well, I would tell them to go out and
6029 get themselves somebody else.

Q. Let us take the first time that you unloaded Snowhite & Gerson's trucks: Did you have any conversation with anybody? A. Not that I can recall, no.

Q. Never talked to either of the owners of that company? A. Never spoke to them.

Q. Did their trucks just draw up and the drivers ask you would you unload for them? A. That is right.

Q. Did you at any time have any conversation with either Snowhite or Gerson about the unloading of their trucks? A. No. I can't recall any.

Q. Did you ever tell their drivers that they had to employ you if they wanted to unload in New York? A. Never did.

6030 Q. Did you ever have any conversation on that subject with the Snowhite & Gerson drivers? A. Not that I can recall, no.

Q. Well, how did you learn that it was Palmer's freight that was in the Snowhite & Gerson trucks? A. They showed me the receipts for what they had on the load.

Q. How did they come to show you the receipt if you didn't have any conversation with them? A. Well, they used to come in to me and show me the receipts for what they had and say, "Here, I got a load of your freight outside."

Q. Was that pursuant to your demand that they show you the receipt? A. It was not.

Q. Did you ever have any conversation with them as to what they had on the truck? A. No.

Q. You say you cannot recall having had discussions with Snowhite & Gerson drivers about their not being able to unload in New York unless they paid you? A. I never said anything like that to them.

Q. Now let me see if I can refresh your recollection as to these men who stood on the corner with you: Can you tell us whether or not Anthony Barone was one of them? A. Who?

Q. Anthony Barone, B-a-r-o-n-e? A. I don't know him. 6032

Q. You don't know anybody by that name? A. No.

Q. Can you tell us whether or not William Stratton was one of them? A. I don't know that fellow's name by the name.

Q. Do you know Frank Delaney? A. No, I don't know him.

Q. Do you know George Schacknowitz? A. No, I don't know him.

Q. Can you think of anyone who used to stand on that corner with you? A. Only the fellows that came out of Novick's Transfer. That is all I can remember.

Q. Did Fred Kolb stand on that corner with you? A. I don't know him.

Q. Jack Spero? A. I don't know him.

6033

Q. How about Thomas? Do you know him? A. I wouldn't say I do know him. I don't know.

Q. What other 807 men did work on these Palmer trucks? A. A fellow by the name of McMahon.

Q. Who else? A. Ned Petraino.

Q. Who else? A. Pat Petrano.

Q. Anybody else? A. That is all I can recall right now.

Q. Now let us take these men one by one and you tell us in each instance when for the first time you met him.

A. I had known Ned Petrano from George Transfer because I worked for him, and his brother Pat.

Q. Did you bring him over to the Palmer job? A. I would tell him if I had work. I would see that they got it.

Q. You were the No. 1 man on the Palmer job? A. No. 1.

Q. Did you put Petrano to work on the Palmer job? A. When I needed him. When I needed him I put him to work.

Q. This other man you mentioned: What was his name? A. McMahon you mean?

Q. Well, you gave us two or three names. I can't recall
6035 them. A. Between all three of them when I needed a man I put them to work; whoever came around.

Q. When did you first meet McMahon? A. After I started working for Palmer.

Q. Where did you first meet him? A. The Sunset Warehouse.

Q. When? A. Oh, around 1938.

Q. Did you put him to work at Palmer's? A. No. Mr. Kavanaugh came to New York and told him he was going to put him to work.

Q. Mr. Kavanaugh? A. Yes.

Q. Take the third name you gave us: What was that name? A. Pat Petrano?

Q. Did you put him to work at Palmer's? A. When I needed him.

6036 Q. Where was he working when you first met him? A. At George Transfer.

Q. Do you know Harry Owens? A. No, sir—Harry Owens?

Q. Yes. A. One of Snowhite's drivers, I think.

Q. Do you recall an occasion where there was a delivery at Starrett, Lehigh Building? A. There were quite a few deliveries at Starrett, Lehigh Building.

Q. Do you recall an occasion when you were there with anyone? A. Not that I can recall, no.

Q. Do you recall being there with the Snowhite & Gerson truck? A. I have been up there with several of them at different times.

Q. On an occasion with a straight load delivered by Snowhite & Gerson trucks for the Starrett, Lehigh Building? A. Yes.

Q. When you went on the Snowhite & Gerson trucks to the Starrett, Lehigh Building, who did the unloading? A. The unloaders from the building and myself.

Q. Isn't it a fact that all the unloading done at that 6038
building was done by the unloaders from the building? A. Some of them, yes.

Q. On those occasions did you get paid? A. I did.

Q. How much? A. 89.42.

Mr. Cahill: That is all.

The Court: Any redirect?

(No response.)

(Witness excused.)

PETER PAUL WASKIEWICZ, residing at 1712 Putnam Avenue, Ridgewood, Brooklyn, New York, one of the defendants, called as a witness on behalf of the defendants, being 6039
duly sworn, testified as follows:

Direct examination By Mr. Murray.

Q. Peter, how old are you? A. 27.

Q. Are you a member of Local 807? A. I am.

Q. And when did you join that union? A. 1931.

Q. Have you got a license to drive a truck? A. I have.

Q. How long have you had a license to drive? A. Since 1930.

Q. Now, were you employed in 1936 and 1937? A. Part of 1936 I was, but not in 1937.

Q. Whom did you work for in 1936? A. Well, I worked for a little while for Victor Lynn Transportation.

Q. Where is their place? A. 24th Street; 507 West 24th Street, New York.

Q. How long did you work there? A. Oh, I don't remember now. A couple of months I guess.

Q. Before that where did you work? A. Before I came to Victor Lynn?

6041 Q. Yes. A. Before that I wasn't working anywhere.

Q. You were out of work, were you? A. Yes.

Q. Now, did you ever meet a witness who testified here on May 1 of this year named William F. Betts? A. May 1? Yes.

Q. Do you know whether or not he was employed by the Reed Trucking Company of Milton, Delaware? A. Yes, I think he was. He testified he was at the time. He was driving a truck.

Q. Now, do you recall that on May 1 Betts testified here in substance that you approached him at the Embassy Grocery Supply in Greenwich Street some time in July or August, 1937? A. Yes.

Q. And that you asked him if he had a city man on the truck? Do you recollect he testified to that? A. Yes, sir.

6042 Q. And did you say to him, "You have to have one," or a union man, 807? A. I said to him——

Q. Did you say that to him? A. No.

Q. Now, did you have a conversation with him at the Embassy Grocery Supply in July of 1937? A. Yes.

Q. Would you be good enough to tell the jury as precisely as you can what you remember that conversation was about? A. Well, I was walking up the street and I

seen them getting ready to back in. So I walked up and I asked him if he was a union man. He said no.

I said, "Have you got a union man?" He said, "No."

I said, "Well, this place, they won't receive the load unless you got a union man on the truck."

So he didn't want to believe me. So both of us went inside and we asked the receiving clerk.

Q. When you told him that they wouldn't receive the load in the Embassy Grocery unless he had a union man, what did he say? A. Well, he wanted to go in and find out for himself.

Q. Did he say anything? A. No, he didn't say nothing then. 6044

Q. Did he go in? A. Yes.

Q. Did you go with him? A. Yes.

Q. Now, where is the Embassy Grocery Supply Company located? A. I think it is 407 Greenwich Street: something like that—408.

Q. What kind of place is it? A. It is like a warehouse where they store their canned goods.

Q. Is it a large place? A. Well, it has got two or three stories, I think.

Q. Try to keep your voice up, please. Now, did you go in there to the Embassy Grocery with Betts at that time? A. Well, I went up with him on the platform and he went inside.

Q. Did you hear him having any conversation with anyone there when you went on the platform? A. Well, I heard the man say he wouldn't take the load. That is all. 6045

Q. Who was the man who said that? A. I judge him to be the receiving clerk. He is the one; he went up to talk to him and he was in a little booth there where the receiving clerk sits.

Q. Did you ever personally have any connection with the Embassy Grocery? A. No.

Q. Did you have anything to do with their receiving clerk? A. No, I haven't got nothing to do with him.

Q. Did you ever tell the receiving clerk there not to receive loads unless the truck carried a union man? A. I did not.

Mr. Ennis: I object to that as leading, your Honor.

Q. Now, when the driver Betts came out after that conversation that you say he had with somebody did you then have a talk with him? A. Yes.

6047 Q. Did he say anything to you? A. Yes. He said he was going to call up Commissioner Morgan.

Q. Did he say who Commissioner Morgan was? A. No, he didn't say. He said he was going to call him up.

Q. Well, did you know who Commissioner Morgan was? A. Yes.

Q. Who was he? A. Commissioner of the market.

Q. And when he said he was going to call up Commissioner Morgan did you say anything? A. Yes.

Q. What did you say? A. I stated, "Go ahead. It is up to yourself if you want to call him."

Q. Did you wait there? A. Yes.

Q. Do you know whether or not Betts did do any telephoning? A. Yes. He called Commissioner Morgan.

Q. You don't know that, do you? A. No.

6048 Q. Well, after the telephone call did Betts talk to you? A. Yes.

Q. What did he say? A. He said he was going to call the F. B. I.

Q. What did you say? A. I said, "Go ahead and call them."

Q. Do you know whether he made a telephone call? A. He did.

Q. And after he made the telephone call did he say anything? A. Yes. He was still on the phone and says to me, "Here, the F. B. I. man wants to talk to you," and I said, "All right," and I got on the phone.

Q. Did you have a conversation with someone on the telephone? A. I did.

Q. What conversation did you have? A. He told me to come up here to this building here, the room number at that time—I don't remember now. So I came up here with Betts.

Q. Just a moment. Did the man who told you to come to this building in which you are now tell you who he was? A. Yes, over the phone. 6050

Q. What did he say? A. He told me he was a Federal Bureau of Investigation man and he wanted to speak to me.

Q. Did he give you a room number? A. He did.

Q. After that conversation what did you do? A. Well, I came up. Betts pulled his truck up the curb a little more and locked it, and came up here with me.

Q. He came down here with you? A. Yes.

Q. Was there anyone but yourself and Betts? A. No. Just me and him.

Q. Together? A. Just me and him.

Q. When you got down here did you see someone in this building? A. Yes. We went right up to the room and seen the girl at the desk there.

Q. When you got down here did you have a conversation with somebody? A. Yes. Well, I talked—— 6051

Q. Yes or no. A. Yes.

Q. Do you know the name of the person you talked to? A. No.

Q. Now, did you see a man here that you talked to who represented himself as connected with the F. B. I.? A. He looked like the man.

Q. Well, did he represent himself to be connected with the F. B. I.? A. No, he didn't say anything.

Q. Did he say anything to you as to who he was? A. No, he didn't say anything to me who he was.

Q. Did you have a conversation with that man? A. Yes, sir.

Q. Will you tell us as closely as you remember it what he said to you and what you said to him? A. Well, he asked me what the trouble was. So I told him. I said that I was out looking for work and I happened to walk up to this man here; he was going to back in and I knew the place did not receive loads unless there was a union man on the truck, and I was just looking for a day's work. So he asked me who I was and looked at my book, asked my
6053 name, what local I was from and all and I told him. So he says to me, "All right. You go home now, and the Embassy Grocery is going to receive the load." So I went home.

Q. Do you know whether or not he made a telephone call in your presence when he said that the Embassy Grocery was going to receive the load? A. I think he called up the Embassy and was talking to them—no, I don't remember now. I can't recall now, it has been so long. He might have.

Q. But you don't know? A. No.

Q. Whether or not he did? A. No.

Q. Now, after the conversation with the so-called F. B. I. man was terminated what did you do? A. I went home.

Q. Did you ask this driver Betts for any money? A.
6054 No, no, sir.

Q. Did he give you any money? A. No, sir.

Q. And after that did you see that driver again? A. No. I never seen him; just in court here.

Q. Now, Peter, are you acquainted with a witness who testified here on May 1 named Joseph Buglio? A. No. I never seen him. I seen his trucks but I never seen the man himself.

Q. Did you ever work with the Buglio Trucking Company? A. Yes.

Q. Do you remember when it was? A. Well, I worked several times for him.

Q. Do you know about how many times? A. Oh, I don't know. Maybe four or five; I don't know.

Q. Do you recollect how you got that work? A. Yes. At that time I wasn't doing anything and I was hanging around the diner.

Q. Where was the diner? A. On 25th Street and Tenth Avenue.

Q. Yes. A. The steward on the job came over and asked me if I was doing anything. I said "No." 6056

Q. Do you know the name of the steward on the job? A. I think his name is Martin.

Q. Do you mean he was steward for the Buglio people? A. Yes. He always worked for them every day.

Q. Do you remember when that was that Martin spoke to you? A. Where?

Q. When? A. No, I don't remember when.

Q. Do you remember what year it was? A. No, I couldn't say. I don't remember now.

Q. And after Martin spoke to you about whether or not you wanted a job what did you do after that? A. I said, "Sure, I want to go to work."

Q. And what did you do? A. Well, he said, "All right. Come right over with me and I will show you what truck to work on," and I went over and he told me to go to work. 6057

Q. At that time had you spoken to Buglio? A. Had I spoken to Buglio?

Q. Up to that time. A. No, no; never.

Q. When you went to work on the truck did you see Buglio? A. No.

Q. Do you know who the driver of the truck was? A. No. I never got to know their names because I never went

to work there much. Maybe once a month; something like that.

Q. What kind of work did you do on Buglio's trucks? A. Well, I had unloaded a couple of loads of canned goods.

Q. Yes. A. And picked up a load at that time.

Q. Did you stop any of Buglio's trucks at any time? A. No, I never stopped them.

Q. Did you yourself ever ask Buglio for work? A. No, I never did.

Q. Now, did you ever work for Snowhite & Gerson of Bridgeton, New Jersey? A. I don't know. I can't remember now. I might have, but I don't know. I am not sure

6059 now.

Q. Did you know a truck driver employed by Snowhite & Gerson of Bridgeton who testified here on May 7, 1940, by the name of Harry L. Owens? A. No, I never knew any of his drivers. I never met any of them.

Q. Do you recollect working for Owens or with him? A. No, I don't.

Q. Well, do you recollect at any time up to the summer of 1938 having worked for Snowhite & Gerson? A. No, I don't remember.

Q. Do you recollect whether or not you did one day's work for Snowhite & Gerson? A. I might have.

Q. But you don't remember? A. I don't remember. I am not sure.

6060 Q. Well, did you ever stop any of Snowhite & Gerson's trucks? A. No. I never seen any of his.

Q. Did you ever demand of any of their drivers that you should be put to work? A. No. I never talked to any one of their drivers.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. You testified on direct examination that you joined Local 807 in 1931. A. That is right.

Q. Now, when did you join Local 807? A. 1931.

Q. Have you got your book? A. I have.

Q. Get it out if you please and look at it. Can you tell us now from the book when you joined Local 807? A. The first time?

Q. No. I want what the book shows when you joined Local 807. A. This book shows I joined the second time—I was reinstated. I got a withdrawal in 1934.

Q. Will you tell us what your book shows as to when you 6062
joined Local 807. A. 11/18/36.

Q. November 18, 1936, isn't it? A. Yes.

Q. By the way, have you been a member of Local 807 since November, 1936? A. Yes.

Q. Now, you say you belonged to 807 on an earlier occasion? A. I did.

Q. When did you retire from Local 807 on the earlier occasion? What was the date of that? A. I don't know the date. I am not sure of the year, but I think it is 1934. I am not sure now.

Q. Wasn't it 1933? A. It might have been 1933. It could have been 1933.

Q. You say you worked for Victor Lynn? A. Yes.

Q. Transportation Company? A. Yes.

Q. In part of 1936, is that right? A. That is right. 6063

Q. What part of 1936 did you work for the Victor Lynn Company? A. During the summer.

Q. During the summer? A. Yes.

Q. How long did you work there? A. Oh, I don't remember that.

Q. What is your best recollection? A. I couldn't tell you.

Q. You say you don't recall a driver by the name of Harry Owens, a Snowhite & Gerson driver? A. No, I don't.

Q. I show you Government's Exhibit 61 for Identification and I ask you if you have ever seen that before. Did you ever see that before? A. Yes.

Q. Whose handwriting is that in? A. Mine.

Q. Did you give that to the driver Owens? A. I might have.

Q. Well, did you or didn't you give it to Owens? A. Well, now that my recollection is recalled I can say that I did, yes.

6065

Mr. Cahill: I offer that in evidence.

Mr. Murray: I have no objection.

The Court: Received.

(Government's Exhibit 61 for Identification received in evidence.)

The Court: Show it to the jury.

Mr. Cahill: It is very brief. I will read it. "Received $9.42 in check from Harry L. Owens for unloading truck, Peter Waskiewicz, Local 807." To the left is "280 West 86th Street, New York City."

Q. Now, after you left the Victor Lynn Transportation Company in 1936 what then did you do? A. After I left

6066 Victor Lynn?

Q. Yes? A. Then I wasn't working at all. I was hanging around.

Q. Where were you hanging around? A. Well, I would walk around town looking for work.

Q. Whereabouts were your walking around looking for work? A. All over town.

Q. Any particular section? A. No. I would be in Brooklyn; I would be on the East Side; I would be downtown; I would be up in the Bronx; all over.

Q. To warehouses? A. No. Just walking the streets. That is all.

Q. Well, did you just walk aimlessly or did you walk along particular streets? A. No; just walked aimlessly.

Q. Did you spend any particular time at this diner you told us about on Tenth Avenue? A. Yes. I used to go in there.

Q. How often used you be in that diner? A. Maybe twice, three times a week.

Q. For how long at a time would you stay around that diner? A. Oh, I don't know.

Q. Your best recollection? A. I don't remember. I couldn't say. 6068

Q. Well, was it just long enough to eat or did you make a hangout of the place? A. Well, I had a cup of coffee, piece of cake or something like that and then I walked out.

Q. Would you stand around the diner after that? A. A little while; then I walked out.

Q. How long would you stand around on the average? A. A minute or two.

Q. Any longer? A. No.

Q. What was the name of this diner? A. I don't remember now. I an't been there so long.

Q. You used to go there three times a week you said a moment ago, did you not? A. Yes, sir; that is right.

Q. For how long a period of time did you used to frequent it three times a week? A. Maybe five or ten minutes. 6069

The Court: We will suspend now and we will convene at 11 o'clock tomorrow.

Mr. Cahill: Will your Honor direct the witness not to speak to anybody?

The Court: Yes. You will not talk to anybody until your cross-examination is finished. After that he may have an opportunity to confer with his counsel.

(Adjourned to May 15, 1940, 11.00 A. M.)

New York, May 15, 1940,
11 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.)

PETER WASKIEWICZ, resumed the stand and further testified as follows:

Cross-examination continued by Mr. Cahill.

6071

Q. When we adjourned yesterday I was asking you if you could tell us the name of this diner which you say you frequented. Are you now in a position where you can tell us the name of the diner? A. Yes. The Puritan Diner.

Q. It was the Puritan Diner? A. Yes, sir.

Q. Are you sure it wasn't the Century Diner? A. It might have been.

Q. Well, which was it? The Puritan or the Century? A. I am not sure now; it is one of the two.

Q. What is your best recollection as to which diner you frequented? A. Well, that was the only one that I used to go into for coffee. I don't know if I could remember the name; maybe it is the Puritan; maybe it is the

6072 Century. I don't know.

Q. Now with the exception of the Victor Lynn Company did you do any work during the period from December 1, 1936, up to June 1, 1938? A. December 6th——

Q. December 1, 1936, to June 1, 1938. A. Yes.

Q. Tell us everybody for whom you worked during that period. A. Well, I worked a day or two in the Liberty Freight Forwarding.

Q. Where is that located? A. 25th Street.

Q. Where else did you work? A. I worked for Consolidated.

Q. Consolidated what? A. Motor Lines.

Q. Where are they located? A. 24th Street and Eleventh Avenue.

Q. Where else? A. (No answer.)

Q. Where else? A. I can't think of any other place.

Q. Are those the only two you can think of? A. (No answer.)

Q. You worked for Snowhite & Gerson, didn't you, during that period? A. So he says, but I don't remember that place.

Q. Well, I showed you that receipt yesterday, which was 6074
admitted into evidence, and you said it refreshed your recollection, did you not? A. Yes, that is my receipt.

Q. Now, you worked for the Reed Trucking Company too, didn't you, during that period? A. Who?

Q. Reed—R-e-e-d. A. No, I don't remember.

Q. By what company was the driver Betts employed? A. Betts?

Q. Yes. A. He was working for the company that he testified here yesterday.

Q. Wasn't that the Reed Company? A. It must have been the Reed.

Q. Now, you worked for Buglio, didn't you? A. But I never worked for Reed.

Q. You made the visit to the F. B. I. office with the Reed 6075
driver? A. Yes.

Q. You worked for Buglio during that period, didn't you? A. Yes.

Q. Now, for whom else did you work during that period? A. Well, just the companies that I named. That is all I can remember.

Q. Beg pardon? A. Just the companies that I named. That is all I can remember.

Q. Did you work for other companies whose names you can't remember during that period? A. I might have.

Q. What is your best recollection? Did you or didn't you? A. I should say I did——

The Court: No, no; not what you could say. You are under oath to tell the truth. You can either tell what you can remember or you can say you don't remember, but don't attempt to guess at anything.

Q. Did you or not? A. Well, I can't remember.

6077 Q. Have you no recollection whatsoever as to whether you worked during that period of a year and a half over and above the few jobs you have told us about? A. I worked on W.P.A.

Q. How long did you work on W.P.A.? A. Oh, I don't know. I don't remember that.

Q. What is your best recollection as to how long you worked on W.P.A. during that period? A. I can't remember.

Q. Well, was it a month or two months or three months? Can you tell us by months? A. I can't remember now.

Q. Do you mean to say you have absolutely no recollection of how long you worked on W.P.A. during that period from December 1, 1936, to June 1, 1938? A. That is right.

Q. Well, when did you go on W.P.A.? A. It was either
6078 1937 or 1938.

Q. Well now, can you fix the time more precisely than that? A. No, I can't.

Q. Can you tell us whether you were on for a year? A. No, I wasn't on there for the whole year.

Q. It was less than a year? A. Yes. It must have been a couple of months; that is all.

Q. About two months? A. Maybe two, maybe four, maybe six; I don't remember.

Q. Well, let us take it at six months: Now will you tell us what were you doing during the balance of the time when you weren't on W.P.A. and when you weren't working for Liberty, Consolidated, Snowhite or Buglio? During this period from December 1, 1936, to June 1, 1938? A. I wasn't doing anything; walking the streets.

Q. Well now, this diner you have told us about, where did you say that was located? A. 25th Street and Tenth Avenue.

Q. Where is that in relation to the warehouse of R. C. Williams & Company? A. Well, that is across the street from R. C. Williams.

Q. Did you use to frequent the premises in front of 6080
the R. C. Williams warehouse? A. Well, just walked by the place.

Q. How often did you do that? A. Well, on my way to various jobs in the neighborhood.

Q. To what jobs in the neighborhood? A. Well, there is the Amsterdam Dispatch.

Q. Did you work at the Amsterdam Dispatch during that time? A. No, but I shaped there. I went there looking for work.

Q. What other companies? A. Saul Trucking Company.

Q. What others? A. On the way back I stopped in Victor Lynn, stopped in Liberty, stopped in Middle—well, at that time it was the Southern Transportation.

Q. How many truck drivers did you approach as you 6081
did Betts of the Reed Company during the period from December 1, 1936, to June 1, 1938? A. How many what?

Q. How many truck drivers did you approach in the same way that you did Betts of the Reed Trucking Company during this period from December 1, 1936, to June 1, 1938? A. Just that one; Betts.

Q. That is the one and only time you asked a truck driver if he had a City man on his truck? Is that your testimony A. That is right.

Q. Well, how did the idea occur to you of going up and asking Betts that question? A. Well, I heard that the Embassy wouldn't allow them to back in unless they had a union man on the truck.

Q. Did you have any conversation with any 807 men about that? A. No.

Q. Had you never heard before this that 807 men were insisting that City men be placed on over-the-road trucks if they entered the City of New York? A. Have I ever heard that?

6083

Q. Have you ever heard it before you heard this which you told us about the Embassy Grocery Company, namely that 807 men were insisting that they be placed on interstate trucks that entered the City of New York? A. No, I never heard that said.

Q. Never heard it discussed at all? A. No, sir.

Q. Have you ever attended union meetings of 807? A. I did a few.

Q. Well now, tell us by the best approximation of dates that you can, the meetings that you attended of 807 during the period from December 1, 1936, to June 1, 1938? A. Well, I might have went to one or two meetings, that is all. They were on the second Tuesday of the month.

6084

Q. Well, what years were they in? A. When I went to the meetings?

Q. Yes. A. 1936.

Q. Did you go at all in 1937? A. Yes, I did.

Q. How often did you go in the year 1937? A. Maybe once or twice.

Q. Did you go at all in the first six months of 1938? A. I cannot tell you; I do not recall now.

Q. But you are sure that you went twice during 1937, is that right? A. Yes.

Q. Can you fix the period of the year in which those two meetings occurred in 1937? A. It was about the beginning of the year, the first or second month.

Q. Did you go to both meetings in the beginning of the year? A. I cannot say for sure.

Q. What is your best recollection? A. I might have went to one in January and then went to one in February and maybe March.

Q. We would like to have your best recollection as to what meetings you attended in 1937. A. That is the best I can do; I cannot remember what days or what months particularly.

Q. I am not asking you for the days; I am merely asking you for the months. A. Well, I do not want to name any month because I might not be right. 6086

Q. It was the forepart of the year? A. Yes.

Q. How often were meetings held of Local 807 during the year 1937? A. 1937?

Q. Yes. A. They were supposed to be held once a month.

Q. Do you know whether or not meetings were held once a month? A. I do not know, because I did not go to most of them. I only went to a few of them.

Q. At the meetings that you attended in 1937, will you tell us was the subject of the stopping of over-the-road trucks discussed in your presence? A. No.

Q. You never heard any 807 men discuss the subject of stopping over-the-road trucks until you went up to Betts and the Embassy Grocery platform, is that right? A. That is right. 6087

Q. How did you get this work with the Buglio Trucking Company? A. Jimmy Martin, the shop steward, came over to me to the diner and asked me if I am working and I said no. "If you want a day's work, come over to my place and go to work." That is why I went to work with Buglio.

Q. Was this man Steward an 807 man? A. He must have been, otherwise he would not have asked me to go to work, and me being an 807 man.

Q. I will ask you again, do you know whether or not Steward was an 807 man? A. Steward?

Q. I beg your pardon. Martin was an 807 man? A. I did not know at the time, I did not know then.

Q. You did not know him before that? A. No.

Q. When you went over to work for Buglio, who else was over there? A. There was nobody else there, just Jimmy and me.

Q. Just Martin and yourself? A. Yes.

6089 Q. All the other times you were over there, did you see any other 807 men working on the trucks? A. At Buglio's?

Q. Yes. A. No.

Q. Did you see Buglio over there? A. No.

Q. You did not see another 807 man, but Martin and yourself? A. There may have been 807 men, but I did not ask him if there is 807 men there.

Q. The men you knew to be 807 men? A. No, there was nobody there that I knew to be an 807 man.

Q. Did you ever work in Jersey during the period from December 1, 1936, to June 1, 1938? A. Only on a Victor Lynn truck when we had a load over there to pick up and deliver it.

6090 Q. From whom did you get the work you did for the Liberty Company? A. Through a dispatcher there.

Q. What was his name? A. I do not remember his name, a little short fellow.

Q. From whom did you get the work at the Consolidated? A. Through Mr. Donovan.

Q. Who was the shop steward at Liberty? A. I did not know at that time; I did not know who the steward was.

Q. Who was the shop steward at Consolidated? A. Some fellow by the name of Bob.

Q. Bob what? A. I did not know his last name. His first name was Bob. That is all he told me, his name was Bob.

Q. Did you go to work for Buglio without talking to anybody but Jimmy Martin? A. That is all.

Q. You never had any conversation with Buglio himself before you went to work for his company? A. I never even seen Mr. Buglio.

Q. When for the first time did you meet Dillon? A. Dillon?

Q. Yes. A. In court here.

Q. You never knew him before? A. I never met Dillon before. 6092

Q. You never saw him around the diner? A. I might have seen him, but I did not know who he was.

Q. What is your best recollection? Did you see Dillon around this diner or not? A. No, I cannot say that I did.

Q. Returning to Buglio for the moment, do you know how long Martin had worked there? A. No, sir.

Q. And I press the question, can you give us the name of any 807 men other than Martin that you knew who worked at Buglio's? A. I did not know of the men.

Q. You say that Betts is the only driver you ever approached. Will you tell us how did you get the job on the Snowhite & Gerson trucks? A. That I cannot recall. I do not remember the job.

Q. Did you approach Owens, the Snowhite & Gerson driver as you did Betts? A. No, I could not say that I did. After I visited the F. B. I. I never went around stopping any trucks or approaching any trucks. 6093

Q. So you went over to the F. B. I. the very first time you ever stopped a truck? A. That is right.

Mr. Cahill: Nothing further.

6094 *Peter Paul Waskiewicz—For Defendants—Redirect.*

Redirect examination by Mr. Murray.

Q. You were asked by the prosecutor as to your conversation with the Reed driver in relation to the Embassy Grocery. Now you told me, did you not, that you knew that the Embassy Grocery would not receive loads unless there was a local union man on the truck, is that correct? A. Yes.

Q. Did you know of any other concerns that received shipments from out of town truckers who would not receive loads unless there was a local man on the truck?

6095 Mr. Ennis: I object to that as immaterial.
The Court: I will allow it.

A. Yes.

Q. What other concerns were there? A. Seeman Bros., R. C. Williams——

Q. Seeman Bros. did you say? A. Seeman Bros.

Q. What kind of a concern is that? A. Wholesale grocery house.

Q. Do you know where it is located? A. I think it is Beach and Hudson.

Q. Do you know of any other concern? A. R. C. Williams.

Q. Any other? A. Francis Leggetts.

Q. Any other? A. Austin, Nichols.

6096 Mr. Murray: That is all.
(Witness excused.)

May 15, 1940.

MANUEL MAGAN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Where do you live? A. 508 Greenwich Street.

Q. Are you a married man? A. Yes.

Q. Were you a member of a union, Local 807, in 1936, 1937 and 1938? A. 1937.

Q. When did you join the union? A. May 11, 1937.

Q. Now, before May, 1937, what was your occupation? A. I was working for Needelmann Trucking Company from 6098
February, 1937 until about August, 1937.

Q. What kind of work did you do with that trucking concern? A. I drove a truck.

Q. Did you leave your employment in the Needelmann Trucking Company? A. I was laid off due to the fact there was not enough work.

Q. Before you worked for the Needelmann Trucking Company what occupation did you follow? A. I worked for Exner & Carr Trucking Company out of Downington, Pennsylvania, driving a truck and helping on a truck in New York City.

Q. How long did you work for that concern? A. About a year and a half.

Q. That was before you worked for Needelmann? A. 6099
Yes.

Q. And before that what occupation did you follow? A. I worked for Jacob Taub Plumbing Supplies, 158 Green Street, New York City.

Q. How long did you work there? A. About three months.

Q. Now, Mr. Magan, did you ever meet the witness who testified here on April 17th, named Benjamin Mattson? A. Yes.

Q. Did you ever do any work for Strozyk, a trucker out of Swedesboro, New Jersey? A. Yes.

Q. When did you go to work for Strozyk? A. On or about August 14 or 15, 1937.

Q. Do you know whether or not at that time Strozyk was connected with the Eastern & Southern Transportation Company of Swedesboro, New Jersey? A. Yes.

Q. Will you be good enough to tell the jury how you got your employment with Strozyk? A. I was just about got laid off from Needelmann Trucking Company, about the first part of August. That was about the 8th or 9th of August. The following week Mr. Strozyk came in with one
6101 of his trucks and he met me at the corner of Canal and West Street. It was sort of a truckman's receiving depot for different truckmen of the City of New York, and I happened to be there looking for work. Mr. Strozyk came in and he asked if there was any men there that needed work and I said I was not working, that I needed work. He said, "Well, do you want to come to work for me today?" I said, "Yes." So I went along with him that day and helped unload his truck and I drove his truck for him that day. When I got through that evening he said to me, "Well, you drive a truck pretty well. It seems like you are willing to work. Would you like to continue working for me steady?" I said I would be very glad to work for him, due to the fact that I needed work. He said all right. He said,
6102 "I do not know if I will be in any more this week or not, but Saturday I will be up to New York and I will come to your house and see you about employing you steady for me." So that week he did not come in no more. He came in on the following Saturday and came to my house, made arrangements with me so that his trucks would stop at my house, pick me up and for me to go on and deliver his loads for him. And he said that Monday morning he expected to have a truck in Monday morning about 6 o'clock. About

6 o'clock Mattson, the driver, knocked at my door and said that Mr. Strozyk had sent him up to get me to go to work for him that day, and I went downstairs—got dressed and had my breakfast and he waited for me and we left about 7 o'clock that morning. Mattson told me that Strozyk said that I was with him the day of the following week previous, of the week previous, and that I seemed to be a very good driver, that he could let me have the wheel and drive the truck from then on, in New York City. I went out with him that day. We left at 7 o'clock in the morning and we had deliveries through the lower part of Manhattan, the upper part of the Bronx and we finished in Long Island City. We were through at 7 o'clock that 6104
evening.

Q. Now let me interrupt you there, Mr. Magan. On the day that you refer to what kind of merchandise were Strozyk's trucks carting? A. Canned goods, and we picked up scrap iron sometimes. On other occasions we picked up cocoa, Rockwood Cocoa.

Q. When you did work for Strozyk's concern did you always work with Mattson, the driver, or with somebody else? A. He had other drivers, another driver named Milton Edwards and another driver named Cliff Edwards, two colored fellows, and he had another driver who was a brother of his named Michael Strozyk.

Q. Now, Mr. Magan, was the relation between you and Mattson friendly or unfriendly? A. Yes, very friendly.

Q. Did you talk with him? A. Yes, we had several 6105
conversations.

Q. Did you talk with Mattson about the character of his employment? A. Yes.

Q. Would you tell us some of those conversations?

Mr. Ennis: I object to that as immaterial.

The Court: I will allow it.

A. Mattson one one occasion told me——

Q. Can you fix the time? A. Well, about the second or third time after I was with him—told me that he was glad that his employer had made arrangements to have a man to do the deliveries in New York City, because he had worked sometimes more or less 20 to 28 hours a day. He said sometimes he would get back home and he would not even have time even to have his supper, he had to go and take his truck and go right back into the factory at Swedesboro, which is the Hare Food Products, and load up his truck and then come right back into New York. He said he was very glad that he had made arrangements, that the fact is that he could not stand going on that way.

6107 Q. Now, Mr. Magan, when you worked on Mattson's trucks did Mattson always ride with you? A. Sometimes; sometimes he did not.

Q. On what occasions did he not ride with you? A. Well, the only instance that he did ride with me was when he had straight loads, particularly like R. C. Williams or Seeman Bros., Austin, Nichols. Then he went along and helped me to get back home as quickly as possible.

Q. Well, when he didn't ride with you what was he doing?

Mr. Ennis: I object to that unless he knows.

The Court: Sustained.

Q. Well, did you have any arrangement with him on
6108 occasions as to what he would do if he didn't ride with you? A. Yes, sir.

Q. What arrangement did you have? A. I made an arrangement in my house where he had a room to sleep in.

Q. Do you know whether or not he slept in the room in your house? A. I came back and called him from the bed.

Q. When he slept in the room in your house who drove the truck? A. I did.

Q. Who did the unloading? A. I did.

Q. Did Mattson have a helper on his truck? A. No, sir.

Q. Mr. Magan, did you have any conversation with Mattson? A. Several of them.

Q. Particularly as to whether or not he was a member of any union? A. Yes, sir.

Q. Would you please tell us what the conversation was? A. Well, the first conversation I had with him, he told me he never belonged to any organization and didn't intend to; the simple fact is it wasn't necessary to belong to an organization down there.

Q. Down where? A. Down in Vineland. He said they never got any use for him. He said even if you did belong 6110
to an organization that you never had any books; the bosses took care of that; the bosses paid the union, and the bosses kept the books in the office. He says the only time he used the books if any of them did have books was for convenience when it was necessary.

Q. Well now, did you ever see any books of Local 590 of Vineland, New Jersey, in the possession of Mattson? A. No, sir.

Q. You stated that on occasions you worked with two colored drivers named Cliff Edwards and Merton Edwards. A. Milton Edwards and Cliff Edwards.

Q. Milton was it? A. Yes.

Q. When did you work with them? A. I worked with them quite a few times. Also sometimes they came in at 6111
the same time that Mattson did.

Q. Do you remember what part of the year 1937 it was that you worked with the Edwards? A. About the same time. From August until about the 13th of September.

Q. Did you ever have any talk with the Edwards brothers? A. Yes, sir.

Q. Concerning whether or not they were members of 590 at Vineland, New Jersey? A. Yes, sir.

Q. What conversation did you have with them? A. I asked them if they belonged to the local in Vineland and they said no; they said, "We never did belong to any local and we won't belong to any local, because even if we did, it doesn't benefit us in any way or form." He said, "Even now we only get about $4 or $5 a trip, and even for our meals, half the time we ain't got money for our meals."

Q. Now, do you recollect the testimony of Donald Hunter on May 7th in this court? A. Yes, sir.

Q. Do you know where Hunter operated from? A. Yes, sir.

Q. From where? A. Between Swedesboro and New York
6113 City.

Q. Hunter testified in substance that in September of 1937, he first met you on Leonard and Hudson Street in New York. A. No, sir.

Q. Did you meet him there? A. No, sir. I met him later.

Q. Do you remember the first time that you met Mr. Hunter? A. Yes, sir.

Q. When was it? A. On about September—between September 20th and the 22nd.

Q. Of 1937? A. About that time.

Q. Now permit me to go back for a moment: When you worked for Strozyk, did you work each day of the working week for Strozyk? A. No, sir.

Q. How frequently did you operate Strozyk's trucks? A. On an average of about three days a week.

6114 Q. In the operation of his truck three days a week was there any arrangement whereby you were to know when the trucks came in? A. No, sir.

Q. How would you learn that Strozyk's trucks came in? A. They came to my house in the morning.

Q. Was that the usual custom? A. While I worked for them.

Q. Now, how long did your employment with Strozyk continue? A. I worked with him from about August 14th or 15th up to about September 11th or 13th.

Q. Of 1937? A. In fact, the last two days I worked for him he sent me—he owed me money, and he sent me up two checks and I cashed them and they were returned with "no funds".

Q. During that month approximately that you worked for Strozyk, did you work for any other over-the-road trucker during the same week? A. Yes. I think I did work on the last week that Strozyk came in; I believe I worked one or two days for Mr. Hunter.

Q. Were these the only two days out of this month's 6116
period that you were working for Strozyk that you worked for anybody else? A. Yes, sir.

Q. Now, the one or two days that you worked on Hunter's truck, did you the same day work on Strozyk's truck? A. No, sir.

Q. If Strozyk's trucks didn't stop at your house in the morning, would you wait there to hear from Strozyk? A. Yes, sir.

Q. How long would you wait? A. About 12 o'clock, 1 o'clock.

Q. If Strozyk's trucks didn't come in after waiting until 12 or 1 o'clock, would you be paid by Strozyk? A. No, sir.

Q. And when it came to 12 or 1 o'clock, did you do 6117
anything about any other employment on that day? A. I couldn't on that time.

Q. Mr. Hunter testified here on May 7th that around September of 1937, he asked you why his trucks were refused to be unloaded, and he further testified that you stated in substance that his trucks were not unloaded because he refused to sign a contract with Local 807 and pay $9.42 a load, and that you said that he could get unloaded and wouldn't have any trouble if he signed the contract.

Did you have in substance that conversation with Mr. Hunter in September of 1937? A. Not at that particular time.

Q. Did you have a conversation? A. Not of that type.

Q. Well, when did you first meet Mr. Hunter? When was it? A. I met Mr. Hunter about September 20th or 22nd the first time.

Q. Did you have a conversation with him at that time? A. Yes, sir.

Q. Will you please tell the jury as nearly as you recollect what the conversation was? A. Mr. Hunter——

6119 Mr. Cahill: May we have the place fixed?

Mr. Murray: He said September 21st.

Mr. Cahill: The place, if your Honor please.

Q. Where did the conversation take place? A. At my house.

Q. At your house? A. Yes, sir.

Q. Well now do you know how it came that Mr. Hunter went to your house? A. Mr. Hunter came to my house and he said that Mr. Strozyk had given him my address, that he had highly recommended me to him, and that he had understood that I had been working for him on his trucks two or three times, and his drivers went back and told him that my work was very satisfactory, and he said that he wanted to come up and talk to me so that I could
6120 continue on working for him in New York City.

Q. Well, did Hunter tell you how he got your address? A. He got it from Edward Strozyk.

Q. Is that what he said? A. Yes, sir.

Q. Was there any further conversation with Hunter at that time? A. Yes, sir.

Q. What was the further conversation? A. He made arrangements with me that any truck that came in of his that I was to work on. In other words, a truck with more

than four or five stops I would continue on and work until it was finished; if it was a straight load, that I would have to unload two trucks, and I agreed with him, and I told him that it made no difference whether it was one or two trucks, that I would give him an 8-hour day work: He said that is all he wants. He said, "I am willing to pay you your wages providing you give me a day's work." So we settled the agreement that way. I didn't see Mr. Hunter then until about, I believe about the last of September.

Q. Of 1937? A. Of 1937.

Q. Now, Mr. Hunter testified here on May 7th in substance further, that you told him it would be impossible for him to get a truck unloaded anywhere in the City of 6122
New York unless he signed a contract; he stated further in that conversation, that he said to you that he couldn't afford to pay it, and that you said it would be impossible for his trucks to be unloaded unless he did pay, and further that you said to him that you were not allowed to accept any money from him unless he signed a contract: Did you have that character of conversation with Mr. Hunter? A. Not exactly that way.

Q. Well, as closely as you remember it, please tell the jury what conversation you did have with Mr. Hunter, first fixing the date if you can? A. I had——.

Q. Just a moment. The date, if you remember? A. Mr. Hunter came to New York about the last part of September. That was——

6123

Q. The conversation you were about to relate, where did it take place? A. That took place at the corner of 25th Street and Tenth Avenue.

Q. Was it on the street? A. In the diner.

Q. When you had that talk at that place with Mr. Hunter, had you had a prior engagement to meet him there? A. Yes, sir.

Q. And how was that engagement made? A. That morning his truck came to my house and called me. I think his name is Louis, one of the drivers.

Q. You mean the driver's name was Louis? A. Louis.

Q. When the truck came to your house, was Mr. Hunter on the truck? A. No, sir.

Q. Did you have a conversation with the driver Louis? A. Yes, sir.

Q. Will you be good enough to tell the jury what that conversation was? A. That morning Louis came to my house and he said to me, "Mannie, I am awfully sorry, but I have orders from Mr. Hunter that we are not to em-
6125 ploy you any more." So I said, "Why? What is the reason? Hasn't my work been satisfactory?" He said, "No, your work has been very well satisfactory." He said, "In fact, we are sorry. We all like you, but that is the orders Mr. Hunter gave me. Mr. Hunter told me that he had a talk with Mr. Morgan of New York City and that Mr. Morgan had instructed him that it was unnecessary to hire any more men in the City of New York." So I said, "All right. Just as long as you don't want me to work for you anymore, O.K. Go ahead and deliver your load." So he said, "You ain't going to be hurt at me, are you?" I said, "No, why should I be hurt at you? You are only doing your job." So he went off and left me. So about an hour and a half later I got a phone call at my house—telling me
6126 someone wanted me on the phone. I went on the phone, and the other side said, "This is Louis." Louis is the driver of Hunter. And I said, "What do you want, Louis?" He said, "I am up in R. C. Williams, Mannie, and they won't receive my load." I said, "Well, what do you want me to do about it; I don't know anything about it."

Q. Just a moment. Do you know whether or not R. C. Williams concern declined to accept shipments from over-the-road trucks unless the truck was manned by a local

807 man? A. Well, R. C. Williams had a rule not to accept any freight from any over-the-road outfit unless it was covered by a New York City union man, but it didn't make any difference whether it was 807, 282, 816, as long as it was a New York City union man.

Q. Well, did you have anything to do with that situation of R. C. Williams refusing to accept freight unless there was a union man on the truck? A. No, sir, not at that time.

Q. Before September of 1937 that you speak of, do you know how long R. C. Williams had followed that course? A. As far as I remember, it had been that way.

Q. Do you remember how long it had been that way? 6128
A. I couldn't tell.

Q. Well, you testified here that in May of 1937 you joined Local 807? A. Yes, sir.

Q. Do you know whether at that time in May of 1937, R. C. Williams followed that course? A. Yes, sir.

Q. After the conversation with Louis, the driver, did you go any place? A. I went up to where—he asked me to come up there.

Q. Up where? A. R. C. Williams.

Q. And did you go? A. I came up, and he met me at the diner.

Q. Who did? A. Louis. He was in the diner calling up. So he said to me, "Well," he said, "I can't get my load off." I said, "Well, I don't know anything about it, Lou; you go and back in." I said, "Take your truck and back it 6129
in and see if you can't get it unloaded." He said, "Well, I tried to back it in before, and they wouldn't accept me. They told me get out." I said, "What are you going to do?" He said, "I am going to call up Mr. Hunter." I said, "All right, go ahead." So he said, "Well, Mr. Hunter told me to call up Commissioner Morgan." I said, "Well, do whatever Mr. Hunter told you to do." So he called up

Commissioner Morgan's office, and whatever the conversation was I don't know, and about, say about a half hour later, two detectives from Commissioner Morgan's office came down.

Q. Do you know what their names are? A. One of their names was Barbara, I believe, and the other one's name was Cantelechi or something to that effect. Anyway, they told me that they were from Commissioner Morgan's office, and they were assigned to the chicken market, and they asked Lou what was the trouble. I was standing there, and Lou said, "Well, I went to deliver my load into R. C. Williams and R. C. Williams wouldn't accept my load." So I said,
6131 before Mr. Barbara, I said, "All right, take your truck and back it in now and deliver your load." I said, "I don't want you to say later on I had anything to do with this. I had nothing to do with it, Lou, and you know it." And the detectives went inside to R. C. Williams and they spoke to Mr. Curtis.

Q. Who is Mr. Curtis? A. Mr. Curtis is the manager of R. C. Williams, and Mr. Curtis told Barbara that it was a rule in R. C. Williams not to accept any freight from any trucks that came in from over-the-road unless they had a New York City man on them. So Mr. Barbara came out and went over to Louis, and he said, "Well, Louis, nothing I can do about it." He said, "That is the rule of R. C. Williams. That is all can be done. All you can do is call up your boss."

6132 So he called up his boss and he came out—so he said he called up his boss; I don't know—then he came out. He said, "My boss will be up here in about two or three hours."

So Mr. Hunter arrived about, I believe, about 2.30 that afternoon. In the meantime me and Louis, his driver, was sitting in the diner at 25th and Tenth Avenue, and Mr. Hunter came in and he said, "What seems to be the trouble?" So Louis told him the story. So he came over to

me and Mr. Hunter said, "Mannie, do you want to go to work now?" I said, "Well, Mr. Hunter," I said, "you sent word this morning here that I was fired, that you didn't want me any more." So I said, "As long as I am fired, I don't want to go to work now until you come down to our union and sign a contract as to my protection in the future." I said, "If you don't sign a contract, the situation will be the same as it was now; a driver comes up who has been working for you, giving you a satisfactory day's work," and I says, "I know you told your driver to come up and tell me you didn't want me any more, for no reason at all." I said, "Now if you want me to go back to work for you you will have to go down to our union room and 6134
sign a contract for my protection in the future."

Q. Well now, after your conversation with Mr. Hunter, did you go any place? A. Yes, sir.

Q. Where did you go? A. We went down to the union room, Local 807.

Q. Do you recollect that Mr. Hunter testified here that when he went to the union rooms that he met Mr. Hickey, Mr. Campbell and Mr. Devery and the bookkeeper whose name he did not recall? Do you remember Mr. Hunter testifying to that, substantially, here on May 7th? A. I believe I do.

Q. Well, when you went down with Mr. Hunter whom did you see, if anyone, in the union rooms? A. Well, when we got there, down to the union rooms, we were outside by 6135
the Corn Exchange Bank and there Mr. Hunter met another man, and this man Mr. Hunter introduced to me as Joseph Manzone of Local 590. He said that he was a delegate in Local 590 of Vineland.

Q. Yes? A. And Mr. Hunter said that Mr. Manzone was going to come up to the office with him. We went upstairs to the office and there was Mr. Flaherty, Mr. Brennan and Mr. Larkin.

Q. Now, Mr. Magan, was Mr. Campbell present on that occasion? A. No, sir. Not then; no, sir.

Q. Was there any discussion about a contract while you were present? A. Yes, sir.

Q. Was Mr. Campbell present during that discussion? A. No, sir.

Q. Well, now, will you tell us the discussion that was had, if anything, concerning the signing of a contract on the part of Hunter? A. We went into the next room, a special room outside the office, next to the office, and Mr. Manzone of Local 590 and Mr. Hunter, myself, Mr. Brennan, Mr. Flaherty went inside. Mr. Flaherty took two
6137 contracts from the drawer and gave them to Mr. Hunter and told Mr. Hunter to look them over and read them carefully, and after he had read them carefully, make up his mind whether he would like to sign it or not.

So Mr. Hunter took the two contracts. He read it over and when he got through reading it over, he said, "Well, I don't think I can sign this contract." He said, "In fact, I am not going to sign it." So he said, "Isn't there some kind of arrangement we can come to in which we can make a special contract instead of my signing this one?" And Mr. Brennan spoke and said, "No, we only have one uniform contract; that is for everybody." He said; "If you think that you want to sign that contract, all well and good. If you don't want to sign it, you don't have to.
6138 We don't make anybody sign it. And furthermore," he said, "we don't ask anybody to sign it." He said, "Well, what happens if I don't sign it?" He said "Nothing happens if you don't sign it; you don't have to sign it."

Q. Was there anything at that time said about the further employment of Local 807 men on Hunter's trucks unless he did sign a contract? A. I don't get that.

The Court: The stenographer will repeat the question.

Q. (Read.) A. No. Mr. Hunter said to Mr. Brennan, "Well, how about if I employ Magan here on my truck without signing a contract?" Mr. Brennan said to him, "Well, that is up to Magan; if Magan wants to go to work for you it is up to him."

The Court: We will take a brief recess now.

(Short recess.)

(The clerk called the roll of defendants and all were present.)

Q. Now, after the contracts were given to Mr. Hunter and he said he would not sign them, did you see Mr. Hunter again that day? A. Yes. 6140

Q. Where? A. At the corner of North Moore Street, in the middle of the block, between Hudson and West Broadway.

Q. Did you go there alone or with somebody else? A. I was there alone, and I met Mr. Hunter alone, with one of his drivers, Louis.

Q. Did you see anybody else when you got there? A. Later on Mr. R. A. Byrnes.

Q. You mean the R. A. Byrnes who testified here last week? A. Yes; and there was one of the detectives of Commissioner Morgan's office, Mr. Barbara, and Mr. Hunter said to me, he said, "Why can't we come to some kind of an agreement between me and you?" I said, "Mr. 6141
Hunter, we did come to an agreement when I first went to work with you. I lived up to my part of the agreement but you did not live up to yours." I said, "After I had been working for you you sent word I was fired for absolutely no reason at all." I said, "I think as far as my conscience is concerned, I always give you a hundred per cent. day's work." I said, "You admitted that yourself."

He said, "That is right." He said, "Somebody else told me to get rid of you." I said, "Now, I cannot continue going to work for you under those conditions, unless I have protection for myself for the future." I said, "Now, if you will sign a contract with the union—after all I am a member of the organization, and with an agreement." I said, "Then I can go to work for you, but if you do not sign an agreement I cannot go to work." I said, "Go out and get somebody else to work for you." He said, "Well, under the circumstances I won't hire you or anybody to work," he said, "if I have to sign a contract." I said, "Then I won't go to work for you, Mr. Hunter." So Mr.
6143 Barbara told Mr. Hunter, "Well, you cannot get any agreement between him and you." He said, "That is all you can do. There is nothing else you can do. Go ahead out and get somebody to work for you," and Mr. Hunter left and I have never seen him since.

Q. That was your last conversation with him? A. Yes.

Cross-examination by Mr. Cahill.

Q. When did you go to work for the Needelmann Trucking Company? A. In or about February, 1937.

Q. How long did you work there? A. Up to August, 1937.

Q. And you joined the union May 11, 1937? A. Yes.

Q. Was George Needelmann, the defendant here, con-
6144 nected with the Needelmann Trucking Company? A. He was working there.

Q. Who sponsored you for memebership in Local 807? A. We were working for Needelmann——

Q. Will you just tell me who sponsored you for membership in Local 807? A. I was working for Needelmann. This is the way it happened——

The Court: No, just tell him who did. You do not have to make a speech. Just tell him who the person was, if there was anybody.

The Witness: I went down to——

The Court: Strike out the answer. Do you know what it means to sponsor somebody?

The Witness: It means to propose.

The Court: Propose him. Well, now, did somebody propose you or not?

The Witness: No one proposed me at that time.

Q. When did you meet Willie Campbell for the first time? A. The first time I met Willie Campbell was at one 6146
of the Local 807 meetings.

Q. Was that before or after you joined Local 807? A. After I joined Local 807.

Q. Will you give us the names of everybody you worked for between the period from December 1, 1936 to June 1, 1938? A. I worked for Needelmann from February up to August, 1936.

Q. What were you doing from December 1, 1936? You gave Needelmann. That was February, 1937? A. Yes.

Q. And were you working between December 1, 1936 and February, 1937? A. From July, 1936, up until December, 1936, I worked for Jacob Taub, and before that I worked for Exner & Carr.

The Court: No. Who did you work for after 6147
you left Jacob Taub?

The Witness: After I left Jacob Taub I worked for the Diamond Oil Company.

The Court: When was that?

The Witness: That was from the last part of November, 1936 up until the first part of February, 1937.

6148 *Manuel Magan—For Defendants—Cross.*

Q. What were you doing for the Diamond Oil Company? A. I drove an oil truck.

Q. After you left Needelmann in August of 1937, what did you do then? A. I worked for the Eastern-Southern Transportation.

Q. How long did you work for them? A. Up until September 11th or 13th.

Q. What did you do after that? A. I worked for D. S. Hunter.

Q. Until when? A. I worked for D. S. Hunter from September 13th, about September 15th, rather, up until about November—let me see, it was two weeks before
6149 Thanksgiving—about November 14th.

Q. What was the beginning date on Hunter? A. About September 14th.

Q. Until when? A. Until about November 15, 1937.

Q. What did you do after that? A. I worked for E. R. Goode.

Q. Where are they located? A. Lancaster, Pennsylvania.

Q. Truckers? A. Yes.

Q. When did you go to work for E. R. Goode? A. I went to work for E. R. Goode about November—it was about three days after Thanksgiving.

Q. 1937 A. Of that year.

Q. How long did you work for them? A. I worked for E. R. Goode from that time up until June 7, 1938.

6150 Q. Now, how did you get the work with E. R. Goode? A. He was doing hauling for the New York-Lancaster Transportation.

Q. Who did you— A. E. R. Goode himself employed me.

Q. Have you told us the names of everybody that you worked for from December 1, 1936 through June 1, 1938? A. Approximately, to my recollection, yes.

Q. Just think for a moment. Is there anybody else that you worked for? A. Not that I remember.

Q. How many meetings of Local 807 did you attend during the period from December 1, 1936 to June 1, 1938? A. I attended practically every meeting.

Q. How many meetings were there? A. One every month.

Q. And you went to every one? A. Practically.

Q. Did you ever stop an over-the-road truck in New York City? A. No, sir.

Q. At no time? A. No, sir.

Q. Do you recall the Old Reading Brewing Company? A. Yes.

Q. What did you ever do for the Old Reading Brewing Company A. I work for them at the present time. 6152

Q. When did you start with the Old Reading Brewing Company? A. I started to work for them in November, 1938.

Q. Did you stop the Old Reading Brewing Company's trucks? A. No.

Mr. Boudin: I object.

The Court: The objection is overruled.

Mr. Boudin: Exception.

Q. How about the Pierce Freight Lines, did you ever work for them? A. No, sir.

Q. At no time? A. Not that I remember.

Mr. Cahill: I ask that that be marked for identification. 6153

(Marked Government's Exhibit 71 for Identification.)

Mr. Murray: May I see it, please?

The Court: No, not yet.

Mr. Cahill: I have not offered it in evidence yet.

Q. I show you Exhibit 71 for Identification, and ask you if you have ever seen it before (handing to witness)? A. That is my signature.

Q. Where and when did you see 71 for Identification, if you will? A. I cannot seem to remember it.

Q. But that is your signature? A. It is my signature, yes.

Q. Do you recall signing it? A. Yes.

Mr. Cahill: I offer 71 for Identification in evidence.

The Court: Show it to counsel.

6155 Mr. Murray: I object, because there is no dates here, and we do not know when it was or whether it comes within the issues of the indictment.

The Court: The objection is overruled.

Mr. Murray: Exception.

(Government's Exhibit 71 for Identification received in evidence.)

Mr. Cahill: This reads as follows: "Received from Pierce Trucking Company one day's pay, $9.42, social security 9 cents, Manuel Magan, net $9.33. S.S. No. 056-07-7139."

Q. Now, will you tell us how did you get the work with the Pierce Trucking Company? A. I cannot seem to re-
6156 member that.

Q. Is there anybody else that you worked for that you can now recall that you have not told us about? A. I do not remember that I worked for anyone else.

Q. Did you ever do any work for the Shearer Trucking Company of Pennsylvania? A. I am working for them now. They haul Old Reading Beer.

Q. Is there anybody else you can tell us of? A. There are three truckmen there, Mike Rotzer, J. L. Hilbish and

Shearer Bros. They are three truckmen that haul for the Old Reading Brewery Company.

Q. Is there anybody else you can think of that you worked for? A. That is all.

Q. You have absolutely no recollection as to how you got the job with the Pierce Trucking Company, is that the fact? A. I cannot remember that, no.

Q. Is it your testimony that you waited in until 12 o'clock noon to hear from Mr. Strozyk? A. Yes.

Q. Is it your testimony also that at times during that period for Hunter? A. At the last part of it, before Eastern-Southern stopped coming into New York.

Q. If you waited up to 12 o'clock every day for Strozyk 6158
to call during the period at the end there when you were working for Hunter, what time did you go to work for Hunter? During what period of the day did you go to work for Hunter? A. What time did I go to work for Hunter?

Q. Yes. A. 7 o'clock, when he came to my house and asked me to go to work.

Q. Then you did not wait? A. Because he came to my house.

Q. You did not wait every day until 12 o'clock noon to hear from Strozyk, isn't that the fact? A. I did.

Q. Didn't you just say on occasions you went to work at 7 o'clock in the morning for Hunter? A. That was two days before I got through working for Strozyk.

6159

Q. Isn't it a fact at least as to the two days that you tell us about, that you did not wait until 12 o'clock noon for Strozyk, did you or didn't you? A. Hunter came in that morning and told me that Strozyk would not be in and that I could go to work for him.

Q. After you left the Needelmann Trucking Company, have you ever worked for any outfit other than Strozyk, an over-the-road trucker? A. Could I hear that question repeated?

Q. (Read.) A. No.

Q. Needelmann, I take it, was a local trucker, is that right? A. Yes.

Q. That is the last local trucking job you have ever had? A. That is right, yes.

Q. How many hours a day did you work for Needelmann when you were there? A. Before I became a member of the union I used to start at 7 o'clock and be finished some time at 8 and 9 o'clock at night.

Q. And thereafter? A. After the union I started at eight and I was through at five, and if I worked after five I got paid time and a half for it.

6161 Q. You say you attended all these meetings of Local 807? A. Yes.

Q. You attended a meeting every month from December 1, 1936 to June 1, 1938? A. Up until March, 1938.

Q. Now, did you hear any discussions at the meetings about the stopping of over-the-road trucks by members of 807? A. No, sir.

Q. Never at any time? A. No, sir.

Q. You are absolutely positive that at no meeting of 807 you attended did you hear any discussion of the stopping of over-the-road trucks by 807 men? A. I did hear the chair.

Q. Tell us what you heard the chair say. A. The chair said that we were not to go out to stop any over-the-road

6162 trucks.

Q. What else did you hear? A. That is all.

Q. How many times did you hear that? A. On a couple of occasions when it was brought up.

Q. On how many occasions would you say? A. A couple.

Q. Just two? A. That is right.

Q. No more? A. That is all.

Q. And you heard nothing else, nobody but the chair say that, is that right? A. That is right.

Mr. Murray: May I have the time fixed, so that I can guide myself accordingly?

The Court: Yes.

Q. Will you fix the time in accordance with Mr. Murray's request when you heard this at 807 meetings? A. A meeting that we had in July, 1938.

Mr. Murray: I object to this line of inquiry.

Mr. Cahill: May I put another question, your Honor?

The Court: Yes.

Q. Did you never hear it prior to June 1, 1938? A. 6164
No, sir.

Q. You are absolutely positive of that? A. Yes.

Q. And you are equally positive that you attended these meetings? A. Yes.

Q. And there was no discussion by anybody at the meetings on this subject? A. No, sir.

Mr. Murray: I press my objection.

The Court: The objection is overruled as to the questions that have already been put and answered.

Mr. Murray: I move to strike out the question and answer with relation to July, 1939.

The Court: The motion is denied.

Mr. Murray: Exception. 6165

Q. Now, did you know what Mr. Morgan was commissioner of? A. Yes, sir.

Q. What was he commissioner of? A. He said he was commissioner of markets.

Q. Now, did you have any particular diner that you patronized? A. No, sir.

Q. What was the name of this diner where you met Hunter? A. I always knew it as the 25th Street diner.

Q. 25th Street and where? A. Tenth Avenue.

Q. What was the name of it? A. I do not recall the name of it.

Q. Was it the Century Diner? A. Maybe.

Q. Have you ever been in the Century Diner? A. Yes.

Q. How often during the period from December 1, 1936 through June 1, 1937, were you in the Century Diner? A. When I delivered in to R. C. Williams I went in and had coffee and had my lunch there many times, and when I worked for Needelmann I went in there and had my dinner.

Q. How many days a week, on an average, would you say
6167 you went in there during that period? A. Sometimes I would go there once a week, sometimes I would not go there for three or four weeks.

Q. This diner was where in relation to R. C. Williams' warehouse? A. Directly across the street.

Q. In addition to frequenting the diner did you hang around the entrance to the R. C. Williams warehouse during the period from December 1, 1936 through June 1, 1938? A. No, sir.

Q. Were you never loitering in front of the R. C. Williams warehouse during that period, is that your testimony? A. Yes.

Q. At no time? A. No.

Q. Now, is it your testimony here that you never stopped
6168 any of Hunter's trucks before you met Hunter? A. No, sir.

The Court: Now, one moment. I do not think the witness understood the question.

Mr. Cahill: Perhaps he did not. I will reframe it.

Q. (Read.) A. I never stopped any of his trucks, no.

The Court: That is not the way you answered the question.

Q. Did you ever tell Shearer—you know Shearer? A. Yes.

Q. Did you ever tell Shearer that you would wreck his trucks if he did not hire you? A. No, never.

Q. You never stopped any of Strozyk's trucks? A. No.

Q. You did not stop Strozyk's trucks months before you went to work for him? A. Yes.

Q. Who was the No. 1 man on the Strozyk job? A. There was not any man, No. 1 man, when I went to work there.

Q. Who was the No. 1 man when there was one, do you know? A. There was no No. 1 man.

Q. I show you this contract which bears date May 14, 1937, and I ask you if you know the man whose name appears as the shop steward on the Strozyk job at that time (handing to witness)? A. I know him now, because I see him here, but I did not know him at that time. 6170

Q. Who was it at that time? A. It says here Dillon, but I did not know him then.

Q. You did not know Dillon at that time? A. No.

Q. Did you know any of the men whose names appear on the Strozyk contract? A. No, not at that time.

Q. How about Randazzo? A. I did not know him either.

Q. When do you say you met Robert Dillon the first time? A. When did I meet Robert Dillon the first time?

Q. Yes. A. It was here in court.

Q. When do you say you met Bernard R. Randazzo? A. After I was working on Strozyk. 6171

Q. Was he working there? A. No, for R. A. Byrnes.

Q. When do you say you met Frank Downs for the first time? A. On one of R. A. Byrnes' trucks on one of the consignments I went to deliver for Strozyk.

Q. Give me the date, if you will. A. October or first part of September.

Q. Of what year? A. 1937.

Q. When did you meet William Farrell? A. I did not meet him until about 1938.

Q. When did you meet Thomas Sharkey the first time? A. Thomas Sharkey, I don't think I had known him until about 19—on or about October, 1937.

Q. Was Sharkey working with Strozyk when you went there? A. No, sir, not when I went there.

Q. How about David Pyne? A. I did not know him, but Strozyk told me he had been working for him.

Q. Who was working on Strozyk's trucks when you were there? A. Strozyk told me——

Q. No. I want what you know, not what you say
6173 Strozyk told you. To your knowledge what of the seven men were working on Strozyk's when you went there? A. I don't know.

Q. Can't you tell the name of one of them? A. No.

Q. Were there any others there? A. I don't know.

Q. At all these local meetings that you attended every month, didn't you have discussions with the men as to where they were working? A. No, sir.

Q. How many trucks did Strozyk have coming into New York during the period you worked for him? A. Sometimes two, sometimes three, sometimes four.

Q. Yet you cannot tell us the name of a single 807 man other than yourself who was working at Strozyk? A. At that time when I was working there?

6174 Q. Yes. A. Yes.

Q. Who? A. Tony Venditti.

Q. In addition to Venditti can you recall any other name? A. No one else besides him. He got laid off the same time as I did in the Needelmann Trucking Company.

Q. When did you meet Tony Venditti for the first time? A. At the Needelmann Trucking Company.

Q. Were you laid off at the same time there? A. Yes.

Q. After you and Venditti were laid off, didn't you go down on the west side and start stopping these over-the-road trucks? A. No.

Q. Is it a fact that you and Venditti stopped the Strozyk trucks in August, 1937? A. No.

Q. Immediately after you were laid off at the Needelmann Trucking Company? A. No, sir.

Q. How did you meet Strozyk in the first instance? A. I was on West Street in Teddy's.

Q. West and where? A. Between Watt and Canal, a little trucking office there. I think it was the Harlem Transfer, and the dispatcher there—I went up to see him looking for work. Strozyk pulled up his truck and came in and he asked me if I was working and I told him no. He said—— 6176

Q. Strozyk was driving the truck? A. Yes. He asked me if I wanted to go to work and I said, "Sure."

Q. Did you know at that time whether Strozyk had a truck driver or not? A. No, sir, but I did learn that day. He told me himself.

Q. Did you learn who had been working for him before? A. There is some fellow——

Q. Who did he tell you? A. A fellow by the name of David Pyne had been working for him.

Q. Did he tell you anybody else had been working for him? A. No, sir.

Q. Did Strozyk ever mention Robert Dillon to you? A. No, sir. 6177

Q. Was Sharkey there before or while or after you were at Strozyk's? A. I knew Sharkey after that.

Q. No. Do you know whether Sharkey was there before, during or after your employment at Strozyk's? A. I don't know whether Sharkey ever worked for him at all.

Q. You don't know that? A. I don't know if he ever did work for him.

Q. Didn't you succeed Sharkey as a matter of fact? A. No, sir.

Q. What position were you in this system of numbers when you went to work for Strozyk? A. What numbers?

Q. Were you the No. 1 man when you went there? A. When I went to work for Strozyk?

Q. Yes. A. I went to work for him when he asked me to go to work.

By the Court.

Q. No. Were you the No. 1 man? A. I was the only one that was working for him at that time.

6179

Mr. Cahill: I thought you said Venditti was there.

The Witness: He came later when it was necessary for him to go to work.

Q. Did you understand what is meant by the term "No. 1 man"? A. Well, that is the first man that is working on the job.

Q. Well, is there any similarity between the No. 1 man and the shop steward? A. Well, your Honor, it is this: that is the first man in, who goes to work on the job according to seniority. In other words, he is the first man that is working on the job. He is considered the first man to go to work. That is the No. 1 man.

6180 Q. That is the No. 1 man? A. Yes.

Q. What relation, if any, has the shop steward to the No. 1 man? A. He is the No. 1 man as a rule, the shop steward.

Q. Now, when you went to work for Strozyk there was nobody else working for him? A. That is right.

Q. Did you become the No. 1 man? A. Most naturally.

Q. Well, did you? A. I was the only man working for him. When it was necessary for another man——

Q. Did you become the shop steward? A. I was the only one man there; it wasn't necessary to have a shop steward.

Q. Were there other men employed at any time? A. When it was necessary.

Q. Who employed those men? A. I did, because I was the only one up in this end that could put men to work.

Q. When you employed anybody for Strozyk were you acting as shop steward? A. I was representing Strozyk in New York.

Q. But were you acting as shop steward? A. I suppose you would call it——

Q. No, no; I am not asking you what you suppose you would call it. I am asking you what you did. A. I have never been given the title by the union or anyone else. 6182

Q. Then Strozyk didn't have any shop steward? A. No, sir.

By Mr. Cahill.

Q. Who brought Venditti into Strozyk's work? A. Venditti was around——

Q. No. Please answer my question.

The Court: No. Who hired him?

The Witness: I put him to work.

Q. Whom else did you put to work there? A. That is all to my knowledge. 6183

Q. You never put anybody else to work during the time you were there? A. Maybe, but I can't remember. I can't recall.

Q. Haven't you any recollection whether you put anybody else to work for Strozyk? A. The only one that I can remember was Venditti. It is possible I did put another man to work for one day or so, but I just can't recall who it was.

6184 *Manuel Magan—For Defendants—Cross—Redirect.*

Q. When did you meet Mattson for the first time? A. I met him on the Monday after I met Strozyk.

Q. Where did you meet Mattson? A. He met me at my house.

Q. Mattson was a truck driver for Strozyk, wasn't he? A. Yes, sir.

Q. That is the first time you had ever seen Mattson in your life? A. Yes, sir.

Q. Now, isn't it a fact that you and Venditti together had stopped Mattson over on West Street and told him he couldn't go on unless he hired you? A. No, sir.

6185 Mr. Cahill: That is all.

Redirect examination by Mr. Murray.

Q. Mr. Magan, did you hear Mattson's testimony in this court here? A. Yes, sir.

Q. Did you hear Mattson say at any time that you and Venditti had ever stopped him? A. No, sir.

Q. You know, don't you, that Mattson was a Government witness? A. Yes, sir.

Mr. Murray: That is all.

Mr. Cahill: Nothing further.

The Court: Next witness.

(Witness excused.)

6186

WILLIAM SIMPSON, residing at 450 West 164th Street, New York City, called as a witness in behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Simpson, are you a married man? A. Yes, sir.

Q. Are you at the present time a member of Local 807? A. Yes, sir.

Q. When did you become a member of Local 807? A. September 25, 1934.

Q. You will have to try to keep your voice up. A. September 25, 1934.

6188

Q. In 1934 were you working? A. Yes, sir.

Q. Whom were you working for? A. Working for the Bronx Haulage.

Q. Bronx Haulage? A. Yes.

Q. Where is their place of business? A. 313 East 134th.

Q. What kind of work did you do for the Bronx Haulage? A. General trucking.

Q. How long did you work for that concern? A. About six years.

Q. When did you go to work for them? A. Six years before I went in the union.

Q. Would that make it around 1928? A. Something like that.

Q. And when did you leave the employ of that concern? A. When they went out of business.

6189

Q. Then you lost your job? A. Yes, sir.

Q. After they went out of business what kind of work did you next do? A. I went to work for a fellow by the name of Meixner.

Q. Meixner? A. Yes.

Q. Where was his place of business? A. St. Johns Park.

Q. Was he a truckman? A. Yes, sir.

Q. How long did you work for him? A. Altogether about—at least two years anyway.

Q. Now, Mr. Simpson, did you ever do any work for Theodore R. Steller, who trucked out of Shelton Connecticut? A. No, sir.

Q. Did you ever meet a witness who testified here on April 17th, named George Willard Steller? A. Yes, sir.

Q. Do you recollect that Steller testified that he believed that you stopped his truck only once at R. C. Williams? A. I never stopped his truck.

Q. Did you ever have any conversation with Steller at R. C. Williams? A. No.

6191 Q. Steller testified here in substance that he was stopped on a Saturday afternoon when he was unloading at R. C. Williams and you came over when he was unloading and had a conversation with him. Did you meet him at R. C. Williams on a Saturday and did you have a conversation with him? A. No.

The Court: Well, one moment. That is two questions.

Mr. Murray: All right. Withdrawn.

The Court: Did you meet him at R. C. Williams on a Saturday?

The Witness: I don't know if I met him on a Saturday, your Honor. Where I did meet him was in the diner where I ate next to my job.

6192 The Court: Do you remember if that was on a Saturday?

The Witness: That I don't recall.

The Court: Well, when you met him at this diner did you have a conversation with him?

The Witness: No.

Q. Now, did you have a conversation on a Saturday afternoon in which you threatened to throw Steller in the river? A. No.

Q. Did you at that time tell Steller that you were going to see that he did not get out of the city limits with his truck? A. No.

Q. You say that you did meet Steller in a diner, is that right? A. I don't get that.

Q. You say that you did meet Steller in a diner? A. Yes.

Q. Near R. C. Williams? A. Yes. I still see him in the diner.

Q. Well, let us get back to 1937: Do you recollect whether or not you met Steller in a diner then? A. I think so.

Q. Did you have a conversation that you can recall 6194 with Steller in 1937 in the diner? A. No.

Q. Did you ever work for Steller? A. Never.

Q. Were you ever paid any money by Steller? A. No.

Q. Were you present on any occasion in 1937 or at any other time when Steller was struck by anybody? A. No.

Q. Did you strike him? A. Never.

Q. Did you ever see anybody else strike him? A. No.

Q. Now, do you recollect that one Haversat testified here on April 17th and who said he was employed by Steller of Shelton, Connecticut? Do you recollect that he testified that you said to Steller that if Steller kept bothering around here that you would throw him, Steller, in the East River? A. No.

Q. Do you know Carlton C. Hooks, president of the 6195 Hooks Motor Line of High Point, North Carolina? A. No.

Q. Did you ever at any time either in 1936 or 1937 talk to Carlton C. Hooks? A. No.

Q. Have you any recollection during that period of being in the presence at any time— A. No.

Q. —or place of Carlton C. Hooks? A. No.

Q. Now, do you recollect when Mr. Hooks testified on April 30th in this court that he said in substance that he

first saw you at 304 Spring Street in the latter part of 1937 or the early part of 1938? Do you remember he testified to that? A. Yes, sir.

Q. Did you see Mr. Hooks at 304 Spring Street? A. No.

Q. Either in the latter part of 1937 or the early part of 1938? A. No.

Q. Did you, during that period, have any conversation with Mr. Hooks concerning the loading or unloading of his trucks? A. No.

Q. Did you ever work for the Salem Express of Salem, New Jersey? A. No.

Q. Did you have any acquaintanceship either in 1937
6197 or 1938 with a witness named John Lester Finlaw of Salem, New Jersey, who testified here on May 6th? A. No.

Q. Well, do you recollect that Finlaw testified here in this court that in a lunchroom in the spring of 1937 he heard a conversation in which Farrell was talking to a fellow by the name of Bill Simpkins or Simpson? A. Yes, sir.

Q. In the spring of 1937 did you have any conversation with Farrell in the presence of Finlaw? A. I don't know if he was there or not. The only thing I know is I would say: "Hello, Bill," and he said, "Hello, Bill" to me; that is all.

Q. By "Bill" whom do you mean? A. Bill Farrell.

6198 Q. You don't mean Finlaw? A. No.

Q. Now, Mr. Finlaw testified in substance that he heard you and Farrell talking in this diner and that you said in substance that you were going to try to stop trucks coming out of South Jersey and put Local 807 men on the trucks. Did you have that conversation with Mr. Farrell in the presence of Mr. Finlaw? A. No.

Q. Now, let me ask you again, Mr. Simpson, whether you ever worked for Hooks, whether you ever worked for Steller? A. No.

Q. Of Shelton, Connecticut, and whether or not you have had any conversation with anyone employed by them? A. No.

Q. Now, did you have employment in December of 1936, Mr. Simpson? A. Yes, sir.

Q. Where did you work at that time? A. Liberty Motor Freight Lines.

Q. Where do you work now? A. Liberty Motor Freight Lines.

Q. Has your employment with the Liberty Forward or Liberty Freight Lines been continuous since December, 1936, and up to this date? A. I don't get that.

6200

The Court: The stenographer will repeat the question.

Q. (Read.) A. Yes.

Mr. Murray: Your witness.

The Court: Well, we will recess until 2 o'clock.

(Recess to 2 P. M.)

AFTERNOON SESSION.

WILLIAM SIMPSON resumed the stand.

6201

The Court: All right, proceed, Mr. Cahill.

Cross-examination by Mr. Cahill.

Q. Mr. Simpson, do you know a place of refreshment here in New York City called The Pump? A. The Pump?

Q. Yes. A. Yes, I think so.

Q. Have you never been in The Pump to your knowledge? A. No.

Q. Never heard of it before? A. I have heard tell of the name.

Q. You have heard the name? A. I have heard the name.

Q. But you are very sure you have never been in it? A. That is right.

Q. How many union meetings did you attend during the period from December 1, 1936 to June 1, 1938? A. Very few.

Q. How many would you say you attended? A. Two or three.

Q. And would you give us the times of those two or
6203 three meetings that you attended in that period? A. I do not understand the question.

Q. The dates, the approximate dates of the meetings you attended? A. I do not think I remember that.

Q. Well, did you attend any meeting during the year 1937? A. I don't recall.

Q. Well, did you attend any meeting up to June 1st, 1938? A. I don't recall.

Q. Well, is there any one meeting that you can recall having attended during the entire period from December 1, 1936 to June 1, 1938? A. No.

Q. I thought you said a moment ago that you attended two or three meetings during that time period? A. That is right.

Q. Did you not say that? A. That is right.
6204

Q. Now, which is the fact? Did you attend two or three meetings during that time period or did you attend two meetings during that time period? A. I attended two or three.

Q. Now, when did you attend those two or three meetings? A. I don't recall.

Q. Was it in 1937 or was it in 1938? A. I don't recall.

Q. You cannot even fix the dates of these meetings as to years? A. No, sir.

Q. When was the first time that you met Austin Furey? A. What was that?

Q. When, for the first time, did you meet Austin Furey? A. I think at one of the meetings, one of the union meetings.

Q. When? A. That I can't say.

Q. Well, what is your best approximation as to the time when first you met Austin Furey? A. I don't remember.

Q. Well, can't you give it to us even by year? Was it 1936, 1937, or 1938? A. I just don't recall it. I know I met him at a meeting, but I don't know which meeting it was, and I don't know what time it was. 6206

Q. Well, how long ago was it? A. That I don't remember.

Q. Was it as far back as a year ago? A. We have not had any meetings in eighteen months that I can recall.

Q. Then, so far as you can recall there have not been monthly meetings; is that true? A. That I can remember.

Q. And it was customary to send you notice if there was to be a meeting; isn't that true? A. I don't know.

Q. Well, did you ever get a notice that there was to be an 807 meeting? A. Not that I recall.

Q. And so far as you know there have not been any meetings in how long? A. In eighteen months to my knowledge.

Q. Now, that will carry us back to—this is May, 1940— 6207
that will carry us back to 1939, May, and six months before that would take us back to October or November, 1938; isn't that true? A. Something like that.

Q. And so far as you know there has not been a single meeting of Local 807 since November, 1938; is that the fact? A. That I have attended, yes.

Q. Or that you have known about? A. I didn't hear that.

Q. Or that you have known about? A. Or that I have known about.

Q. Or that you have known about? Right? A. That is right.

Q. I press you, tell us what year did you meet Austin Furey? A. I don't remember.

Q. Well, was it as far back as a year ago? A. I don't remember.

Q. Was it as far back as two years ago? A. That I don't recall.

Q. Was it as far back as three years ago? A. There was one time, but I just don't know when it was.

6209 Q. Well, have you no idea whether you met him when first you got into the union? A. Repeat that question.

Q. Have you no idea whether you first met him when you got into the union? A. No.

Q. Well, when did you meet Willie Campbell for the first time? A. When he came in office.

Q. When was that? A. I think it was in 1936.

Q. And where did you meet Willie Campbell for the first time? A. If I am not mistaken, I should say, I think he come around and I introduced him to my boss.

Q. At the Liberty Forwarding? A. That is right.

Q. Now, what delegate had supervision over the Liberty Forwarding Company? What 807 delegate? A. No particular delegate.

6210 Q. Well, what delegates came in there from Local 807 during the period from December 1, 1936 to June 1, 1938? A. Both delegates.

Q. Who are they? A. Willie Campbell and Austin Furey.

Q. Now, you were the No. 1 man in the Liberty Forwarding, were you not? A. That is right.

Q. And by the way, where did the Liberty Forwarding trucks come from? What part of the country? A. Buffalo, Syracuse, Rochester, Utica, Detroit and Chicago.

Q. Which of these defendants worked at the Liberty Forwarding during the period I have mentioned? A. What period?

Q. The period December 1, 1936 to June 1, 1938. A. Thomas Sharkey works with me now.

Q. Who else?

By the Court.

Q. No. Did he work there during the period from December, 1936 to June, 1938? A. Well, I don't recall when he first started, but I mean he works for them now.

Q. How long has he been there? A. About a year and a half, two years, something like that. 6212

By Mr. Cahill.

Q. Who else? A. That is all.

Q. Well, didn't you hear Waskiewicz testify here yesterday? A. Yes, sir.

Q. Or today? A. That is an extra man.

Q. Now, didn't I ask you which of the defendants worked at the Liberty Forwarding? Did Waskiewicz work there or not at any time during the period from December 1, 1936, to June 1, 1938? A. As an extra man, maybe.

Q. Well, did he work there or not? A. Yes, as an extra man. 6213

Q. When, for the first time, did you meet George Needelmann? A. Never met George Needelmann.

Q. When, for the first time, did you meet Farrell? A. I met Farrell in a diner.

Q. When was that? A. A couple of years ago.

Q. Did you know George Venditti? A. No.

Q. Do you know Tony Venditti? A. No.

Q. How about Ed Weinheimer? Do you know him? A. I have seen him.

Q. When, for the first time, did you meet Ed Weinheimer? A. On a truck passing.

Q. When? A. I don't know offhand.

Q. How far back was it? A. A couple of years.

Q. 1938? A. Around that.

Q. Now, did Furey and Campbell come in together to the Liberty Forwarding Company from time to time since December 1, 1936, up to June 1, 1938? A. Willie Campbell was the first delegate, and we needed other delegates and then, Furey came in long after that.

Q. Do you recall Campbell and Furey coming in to the Liberty Forwarding Company together? A. Yes.

6215 Q. And how often did they come in to the Liberty Forwarding Company together during the period December 1, 1936, to June 1, 1938? A. Maybe once.

Q. Can you recall that occasion specifically? A. Not offhand.

Q. How often did Furey come in there alone during that period? A. I don't think he was ever in there alone.

Q. Beg pardon? A. I don't think I ever seen him in there alone.

Q. How about Campbell? A. When Campbell first came into the office I introduced him to my boss.

Q. How often have you seen Campbell there during that period? A. Not so often.

Q. How often would you say? A. I don't recall.

6216 Q. Your best estimate of the number of times you have seen Campbell there, if you please, during that period? A. Well, it might have been once or twice, but I just don't recall.

Q. Well, is once or twice your best estimate of how often Campbell was there? A. That is about what I figure.

Q. Can you place the time period when he was there? A. No.

Q. Haven't any idea? A. No.

Q. Do you recall Furey receiving a telephone call at the Liberty Forwarding Company in the spring of 1938? A. No.

Q. Were you here when the witness Goddard testified that Furey said he had received a telephone call about the Negro, Charles Arthur Brown?

The Court: I will exclude that question. He was here all right when Goddard testified, or I wouldn't have been on my job.

Mr. Cahill: Yes, your Honor; but it is the foundation for a preliminary question.

The Court: You may ask him if he heard Goddard testify to something, but whether he was here or not—— 6218

Mr. Cahill: I will reframe the question.

Q. Did you hear Goddard testify that Furey told Goddard that he, Furey, was at the Liberty Forwarding Company when he received a telephone call about Charles Arthur Brown, the Negro driver at the Brookline Trucking Company? Did you hear that? A. I don't recall it.

Q. Did you know Charles Arthur Brown, the Negro? A. No, sir.

Q. Did you go in an automobile together with other men up to the Brookline Trucking Company on the occasion when Goddard testified Brown was beaten up? A. 6219 No, sir.

Q. Now, when you stated today that you met G. W. Steller in a diner, is that true? A. That is right.

Q. What was the name of that diner? A. The Century Diner.

Q. Where is that located? A. 25th Street and Tenth Avenue.

Q. Where is the Liberty Forwarding Company located? A. 524 West 25th, half-way down the block from the diner.

Q. Where is R. C. Williams & Company located? A. Right across the street.

Q. Right across the street from which one? A. From the diner.

Q. Now, you say that you met Steller only in the diner; is that your testimony? A. That is the only place I met him. I still meet him there.

Q. What time of day was it that you first met him in the diner? A. About lunch time.

Q. What day of the week, if you recall? A. That I don't recall; I see him so often.

Q. Have you ever had a conversation with Steller about
6221 Local 807? A. Never.

Q. Do you know a driver from Batavia, New York, named Rizzo, who operates his own truck—an owner-driver? A. Not that I know of.

Q. Do you know a driver, Rizzo by name, whose trucks unloaded at the Liberty Company terminal? A. Not that I recall.

Q. Do you recall having a conversation with a driver from Batavia, New York, about deliveries made by that driver, in the City of New Rochelle, New York? A. No.

Q. Do you recall any conversation with any driver about your making claims for services on deliveries made by that driver in New Rochelle, New York? A. No.

Q. Can you identify those two meetings of the union
6222 that you say you attended by telling us the subjects that were discussed at those meetings? A. It is so far back I don't remember.

Q. Well, have you any recollection whatsoever of anything that was discussed at either of the two meetings you say you attended during the period December 1, 1936, to June 1, 1938? A. No.

Mr. Cahill: Nothing further.
The Court: Any redirect?
Mr. Murray: No.
The Court: Next witness.
(Witness excused.)

WILLIAM JOSEPH CAMPBELL, residing at 118-06 221st Street, St. Albans, Long Island, New York, called as a witness in behalf of defendants, being duly sworn, testified as follows:

6224

Direct examination by Mr. Murray.

Q. Mr. Campbell, are you a member of Local 807? A. Yes, sir.

Q. How long have you been a member of that union? A. About twenty years.

Q. Did you hold any office in 807? A. Since December 13th of 1936 I was delegate.

Q. Were you delegate by election of the members? A. Yes, sir.

Q. And did you take office on December 13th? A. No. The old delegate that was in, that is the incumbent delegate, who was defeated in the election, he took me around with him for about two or three weeks, because the taking of office is not effective by the newly elected delegate until 6225 January 1st of 1937.

Q. Before you became delegate, how did you earn your living? A. As a truck driver.

Q. Did you drive for someone in 1936? A. Yes, sir.

Q. Whom did you drive for? A. Syracuse Freight Forwarding Company.

Q. How long had you been driving for that concern? A. About April of 1936.

Q. And before that what job did you have? A. I had numerous jobs. I used to shape around wherever there was prospect of getting work. I was with Consolidated Motor Lines, on the corner of Laight and West Street, Laube Interstate Trade on Washington Street, off Spring.

Q. Now, when you took office as a delegate, Mr. Campbell, what were your duties as a delegate? A. Well, to give an explanation along that line it would be pretty lengthy; it is more or less like being a trouble shooter, you might call it. In other words, wherever there might be trouble arise between an employer and a member of the union where a contract was in existence, we used to entertain
6227 the complaint of the man, the member of our union, or the employer, and we went in and attempted to adjust it in some way. If it was more or less a small or trifling argument we informed the employee to go back, and we asked the employer if he would try and discontinue that because it was a point of contention with the member. We also checked up on dues books of the members to see that he was in good standing, and if he had been a little bit neglectful, we told him to see if he couldn't take care of it in the future.

Q. If you did go out on a matter where there was a dispute and you didn't succeed adjusting it, did you have recourse to any other remedy? A. We had what was known as arbitration. That was a specific clause in the
6228 contract, and the employer always had the right to seek some kind of adjustment or compromise through the medium of arbitration.

Q. And while you held your office as delegate, had there been any arbitration that you had suggested? A. Well, I have had possibly about thirty arbitration cases that came up in that period.

Q. During your service as a delegate? A. Yes.

Q. Now, was your territory allotted to you to work in as a delegate for Local 807? A. Well, it was not exactly

allotted by rule, but it was more or less taken for granted that whenever delegates might have previously been in that territory, that those delegates who succeeded them, would be allocated to that territory.

Q. What territory did you for the most part work in while you were a delegate? A. On the west side. That would take in Staten Island, west side of New York and part of the west side, Bronx.

Q. Now, were there other delegates besides yourself in 1937? A. You mean in the union itself?

Q. Yes, in the union.

The Court: 807.

6230

Mr. Murray: 807, yes.

A. Yes; there was Thomas Hickey, Michael——

Q. Pardon me. Did Hickey's duties take him to the west side of New York? A. It might occasionally where one of the trucks that were garaged in Brooklyn came under his jurisdiction.

Q. Well, where did Hickey mostly work? A. In Long Island and Brooklyn territory.

Q. Was there any other delegate at that time besides Mr. Hickey? A. Michael Ogoe.

Q. And where did he work? A. He mostly took in the southern part of Brooklyn, what is known as South Brooklyn.

Q. Are there any other delegates that you can think 6231
of now who worked as delegates while you did? A. Thomas Clarke. He was located on the east side territory.

The Court: You mean the east side of Manhattan?

The Witness: Yes, from South Street up.

Q. Was Mr. Furey a delegate while you were? A. Yes.
Q. Where did he work? A. On the west side also.

By the Court.

Q. Did Mr. Clarke's territory go over into the Bronx? A. Yes, sir, East Bronx. It actually started from South Street and goes around sort of an angle up on the east side. The divisional point, I believe, was more or less accepted as Fifth Avenue, the dividing line of east and west.

Q. You mean Mr. Clarke had the territory east of Fifth Avenue? A. That is right.

6233 Q. Furey and yourself had the territory west of Fifth Avenue? A. Yes, that is right.

Q. But where was the dividing line in the Bronx? A. Well, in the Bronx it was more or less where a complaint came in, and if we were busy elsewhere, why, maybe Clarke would take care of it or we, in turn, would cover it, because there were very few jobs up in that territory.

By Mr. Murray.

Q. Now, Mr. Campbell, while you were a delegate did you ever direct any member of Local 807 to stop any trucks?

Mr. Cahill: I object to the form, if your Honor please, as leading and suggestive.

6234 The Court: Overruled.

The Witness: Pardon me?

Q. What is the answer? A. I didn't answer. I would like to have that question read, if you don't mind.

The Court: Read the question.

(Question read.)

The Court: Yes or no.

A. No.

Q. Now, do you recollect, Mr. Campbell, that a lady named Anna Chudy of Shelton, Connecticut, testified here as a witness on April 17th? A. Yes, sir.

Q. And do you recollect that that witness testified that she went to the headquarters of Local 807 and saw a Mr. Brennen? A. Yes, sir.

Q. And that she talked to you on that occasion? A. Yes, sir.

Q. Did you have a conversation with Mrs. Chudy at that time? A. Why, I tried to recall what it was, but the only inkling I had of it——

Mr. Cahill: I will object to that and move to strike it out. 6236

The Court: Sustained. Strike it out.

By the Court.

Q. Did you see Mrs. Chudy in court? A. Yes, sir.

Q. And when you saw her on the witness stand did you recollect her as a person you had ever seen before? A. No, sir.

Q. You heard her testimony? A. I heard her testimony.

Q. Now, she testified to a conversation to which you were present with Mr. Brennen. Did you ever have any conversation with her? A. I can recall——

Q. Just answer my question. A. I recall, from the way she testified, that I perhaps did have a conversation with her. 6237

Mr. Cahill: If your Honor please, we did not get the answer.

The Court: He says, "I recall from the way she testified that I perhaps did have a conversation with her."

6238 *William Joseph Campbell—For Defendants—Direct.*

By Mr. Murray.

Q. Now, do you recollect Mrs. Chudy saying to you that the two Sicilianos were working for her, and that she was willing to employ one brother but did not want the other brother to work for her? A. Yes, sir.

Q. Do you remember having talked to her at that time? A. Yes, sir.

Q. Do you recollect what you said to her? A. Yes, sir.

Q. What was said, if you remember? A. It seems so indefinite that time; I am quite sure I didn't have any more than a few minutes conversation, possibly five, be-
6239 cause I recall I walked into the office and I had another appointment; I had to pick up some paper——

Mr. Ennis: I move to strike out the answer as not responsive.

The Court: Yes. Strike it out as not responsive.

Q. Well, have you any distinct recollection now of any conversation that you had with Mrs. Chudy at that time? A. Yes, sir. I was introduced to her——

By the Court.

Q. No. Tell us what you said. Tell us what she said
6240 to you and what you said to her, if anything. A. I asked her if she had a contract with 807. She said no. "Well," I said, "what job is it?" She explained the job there in some degree, I just don't recall exactly.

Q. What did she say? A. She said, "I have some trouble here. I have one of these fellows here, Siciliano." She said, "I have another fellow I can get along with very well, but I don't want this fellow on the trucks." "Well," I said, "Lady, I am not interested if you have them on

the truck or not. You have no contract with us. I am not here as an information bureau." I submitted a contract to her and I told her, "You can look this thing over if you wish to and," I said, "you can give me your answer to it"; and that was the extent of the conversation I had with Mrs. Chudy.

By Mr. Murray.

Q. Now, at that conversation, Mr. Campbell, did you recollect having known the Sicilianos? A. No, sir, I did not.

Q. And at that time did you ever meet the Sicilianos? A. No, sir. 6242

Q. Did you know when you talked to Mrs. Chudy that she had had any dealings with the Sicilianos? A. No, sir.

Q. Or with a man named Joe Briggs? A. No, sir, I did not.

Q. Now, do you know a witness who testified here on April 22 named Russell B. Goddard? A. Yes, sir.

Q. Did you know that he had been employed by the Brookline Transportation Company? A. I did.

Q. Now, do you recollect ever having had any conversation with Mr. Goddard? A. I do.

Q. Do you recollect when that conversation was had? A. Well, there were two or three conversations.

Q. Well, I will try to direct your attention to a particular one. Do you remember talking to Mr. Goddard 6243 concerning a transaction that Eddie Weinheimer had with him concerning an hour and a half overtime? A. I do.

Q. Do you recollect when that was, what year? A. I don't think I can recall the time or the year. It could have been 1937 or 1938. Either late in 1937 or possibly early in 1938.

Q. Now, do you recollect where it was that you talked to Mr. Goddard? A. Up on Tenth Avenue at his office; I believe it is located between 18th and 19th Streets.

Q. Now, did you go there on your own initiative or on someone's invitation? A. I received notice from the office that there was some difficulty up there.

Q. Then you went up and you saw Goddard? A. Yes, sir, I saw him.

Q. Now, do you remember any conversation that you had with Mr. Goddard on that occasion? A. I do.

Q. Will you please tell us as closely as you can remember what the conversation was? A. Well, I met Mr. Goddard up there in his office, and he seemed quite excited——

Mr. Cahill: No.

6245 The Court: No.

Mr. Cahill: I move to strike it out.

The Court: Strike it out.

By the Court.

Q. Now, you understand the English language, don't you? A. Yes.

Q. Well, all you were asked for was the conversation. You were not asked to describe anything or anybody. Now, tell us the conversation. A. I said, "What is the trouble?" He said, "My trucks are all standing still." I said, "Why? What is the matter? Why are they standing still?" He said, "Well, the man would not go to work on them." I said, "Why? There must be a reason for it." "Well,"

6246 he said, "Weinheimer is squawking about overtime." "Well," I said, "what is the question of the overtime?" He said, "Well, he claims he has got an hour and a half coming to him and it wasn't paid to him." I said, "Has he got it coming?" He said, "Well, I don't think so." I said, "Well, what is it, something between you and him on this thing?" I said, "Now, have you got any record that you keep to prove whether or not he has got the overtime?" He said, "No; whenever they come in they tell the fellow

and he marks it down." I said, "How do you mark it down? You are supposed to have a time clock, according to the contract." "Well," he said, "that is not the idea of it," he said. So I said, "Why don't you pay him the hour and a half that he has got coming, or he claims he has got coming, and," I said, "if he hasn't got it coming to him, through the union," I said, "we will make him give it back to you." He said, "No, I am going to stand on my rights." I said, "Well, that is all right with me," I said, "but I can't see the reasonableness of you turning around and permitting the trucks to be stopped all day, as you claim, when there is only about $2 and some odd cents involved in overtime." So I says, "I will tell you 6248
what I will do if you want to. I will take the money out of my pocket to pay the overtime to appease them for the moment anyway, and then if you wish that, we will put the matter to arbitration. If you are right," I said, "why, I will get my money back that I will lay out for you." I said, "In turn, if you are wrong, you will have to pay his overtime." So that condition—I am afraid I am going beyond, I am sorry. I said, "You can have arbitration if you wish to. Whatever arrangements you want to make is all right with me." He said, "No, I am standing on my rights." So I said, "I can't help you out then." Then the windup—I says to the men, "All right, go ahead back to work." So I believe the following day he said he would call Mr. Lovell, and he did call him there in my presence. So I told the men to go back to work. That was the extent 6249
of that conversation.

Q. That was the extent of your conversation? A. Yes.

By Mr. Murray.

Q. Do you know whether or not there was an arbitration? A. There was an arbitration about two or three days later on it.

Q. Do you know who the arbitrator was? A. Mr. Hugh Sheridan.

Q. Do you know the results of the arbitration?

Mr. Cahill: Objected to as immaterial.

The Court: Sustained.

Q. Now, Goddard has testified here in substance, Mr. Campbell, that in a conversation with him concerning this overtime that you said to him in substance, "I don't think you can pay wages; I don't think you want to pay the union scale; the best thing for you to do is to get the hell out of business and go back to Boston where you 6251 come from." Did you have such a conversation with him? A. No, sir.

Q. Did you have any conversation at that time with Goddard concerning the payment of Lovell's employees by Lovell? A. I did.

Q. Will you tell us what that conversation was? A. I mentioned the fact that there had been several—on several occasions little petty arguments, as I termed it to him, that did not need the delegate up there or, in fact, there was no occasion for any stoppage or dispute on them. I said, "After all, the men have been getting bad checks off you people; there has beeen a delay in the payment of wages and overtime both, and it seems to me that you people here want to directly violate the contract instead of 6252 living up to it." I said, "If that was your thought when you signed the contract, you should have never signed it unless you felt you were going to go along with it." I said, "If you feel that way about it and are going to continue it, why don't we arrange some way so that you can just quit the contract?" And I would not give him union men to operate his trucks.

Q. Now, Mr. Campbell, do you recollect the witness named George Beatty testifying in this court on April 23? A. (No answer.)

Q. Mr. Beatty from Bound Brook, New Jersey? A. I don't seem to recall the name.

Q. Would the pronunciation of Beatty mean any more to you than Beatty? A. I don't know what job it is associated with.

By the Court.

Q. Do you mean the B. & B. Transportation Company? A. I believe I do.

Q. Do you remember a man connected with that company by the name of Beatty or Beatty? A. Offhand I don't recall.

6254

Q. Well, do you remember being in court here and hearing testimony about the B & B Transportation Company? A. I remember the B & B Trucking Company.

Q. Don't you remember some man being in court here and testifying that he was formerly connected with that company? A. Yes, but I could not seem to get the two of them together.

Q. Do you remember there was such a man here? A. I don't know if I remember it, no.

Q. Do you remember that he was Mr. Beatty or Beatty? A. Oh, yes, I remember it now when it was brought out this way.

By Mr. Murray.

6255

Q. Mr. Campbell, on April 23 Mr. Beatty says that he went to the union hall and an appointment was made for you to go to Brooklyn the next day and meet him. Do you recollect any such appointment with Mr. Beatty? A. No, sir.

Q. And there was further testimony from that witness that the day following his going to union headquarters he saw you, the defendant Cahill, and a man called Murphy

on Atlantic Avenue in Brooklyn. Do you recollect, did you meet Mr. Beatty on Atlantic Avenue in Brooklyn? A. No, sir.

Q. And he testified in substance that there was a conversation in which he said that Cahill had damaged his truck. Were you present at any such conversation? A. No, sir.

Q. And he testified further, substantially, that you told him, Mr. Beatty, that his financial affairs were up to date and that Cahill said that he had been paid his money up to date, and that you told Mr. Beatty that he could not fire Cahill, and that maybe if he wrecked another truck
6257 he could fire him then. Did you have such a conversation? A. I never spoke to the man.

Q. Do you know whether someone connected with the union did go to Brooklyn, to Atlantic Avenue to meet Mr. Beatty on that occasion? A. When this thing was brought to my attention I did inquire about it, and I found out that Mr. Hickey had been the delegate and had made the appointment and had gone over and met Mr. Beatty.

Q. Were you working in Brooklyn at that time? A. No, sir.

Q. Was that your territory? A. No, sir.

Q. Whose territory was it? A. Mr. Hickey's and Mr. Ogoe's.

Q. Now, did you ever meet Mr. Carlton C. Hooks, the
6258 president of the Hooks Motor Lines of High Point, North Carolina? A. I did.

Q. Did you meet him, if your memory serves you, in December of 1936 at 516 West 25th Street? A. I can't say for sure about the date, but I know I did meet him and it is probably around that time.

The Court: At that address?

The Witness: Yes, sir.

Q. Well, did you say to him on that occasion in substance "We played along with you as long as we can; you will have to sign a contract to use all 807 men or not operate in New York"? A. No, sir.

Q. Do you remember what conversation you did have with Mr. Hooks at that time? A. Yes, sir.

Q. Will you please tell the jury what it was? A. It was about the two men employed by him, and I believe an appointment was made over the telephone to go up, and I met him in his office and we discussed the signing of the contract, because I had brought a copy up with me and submitted it to him. He said to me, "Well, I can't sign the contract now." "Well," I says, "it has just been brought 6260
to my attention by two of the members who had been working for you for about two or three weeks the necessity of the signing of a contract so that we can represent them as a union, which they are members of." He said, "Well, I can't sign that." I said, "Why not?" He said, "I will have to sent it along to the home office down to North Carolina." I said, "Well, all right. When do you expect it back?" He said, "Maybe in about a week or so." I said, "Well, all right. You can either notify me down at the office or else I will take a run up here to about a week or so; but in the meantime," I said, "you will continue employing these union men you now have in your employ." "Well," he said, "I don't see any reason for that." I said, "Well, it is all right with me. You can do 6261
whatever you want to do." I said, "The mere fact that the men are working on this job here and are members of my union I have every right to represent them in submitting a contract to you, because I am their bargaining agent." He said, "Well, I can't see that." I said, "Well, it is all right with me." So I gave him the contract and I expected to hear from him in about a week as we conversed upon; and that was the extent of that conversation there at that time.

Q. Now, when you met Mr. Hooks in the union rooms, did you know that Local 807 men had been working? A. Not first; no, I did not.

Q. When did you first learn that they had been working for Mr. Hooks? A. The men informed me the day that I went up there, and one or two of them was downstairs I believe, and I took them up in the office with me.

The Court: Excuse me. Did I understand the witness to testify that he met Hooks at the union rooms?

The Witness: No; that was on the telephone.

6263 The Court: Or did you meet him up at this place in 25th Street?

The Witness: 516 West 25th Street.

The Court: That is where you had the conversation?

The Witness: Yes.

Mr. Murray: That is my error, Judge. I meant to say West 25th Street.

The Court: That is all right. I wanted to get right in my mind whether I understood him correctly or not.

Q. Had you talked about these men getting employment with Hooks before you saw them? A. No, sir.

6264 Q. Now, Mr. Campbell, was it your peculiar duty to sign contracts with over-the-road truckers or did anyone else in your union do that? A. All of the delegates were empowered to sign contracts. In the absence of the delegate if the men who were employed on the job should come in with the employer, Mr. Larkin sometimes, because of the distance that they might have come to take care of it, would more or less be empowered to sign it also.

Q. Who else signed contracts for the union besides you? A. To the executive board itself acting as an organizing

committee. At one time they were also empowered to sign contracts.

Q. Do you know whether or not Mr. Devery, the president, had authority to sign contracts? A. He did.

Q. Have you any approximation of the number of contracts that Local 807 had with over-the-road truckers?

Mr. Cahill: Objected to as immaterial.

The Court: Overruled. Within what period of time?

Q. Say from December 1, 1936 up to June 1, 1938? A. I would say about 450.

6266

Q. Well, now, of those 450 contracts are you able to tell the jury about what per cent you signed in behalf of the union? A. I would say about 10 per cent. at most.

Q. Do you know who signed those? A. Well, it could have been any one of the other delegates.

The Court: No, not what it could have been. The question is if you know.

The Witness: Well, any one of the other delegates could have signed them.

Mr. Cahill: I move to strike that out.

The Court: Strike it out. The question is if you know.

The Witness: They did sign them.

The Court: Did you see them?

6267

The Witness: Yes, sir, I saw them in the office many times.

Q. Mr. Campbell, are you acquainted with the witness who testified here on May 1st named Joseph Buglio of Vineland, New Jersey? Do you remember ever having met Buglio? A. No, sir.

Q. Did you ever have any talk with him? A. No, sir.

Q. Or any business with him? A. None whatever.

Q. Are you acquainted with a witness named Raymond E. Stiles of Salem, New Jersey, who operated the Stiles Motor Freight? A. No, sir.

Q. Did you ever have any transactions with Mr. Stiles? A. I did not.

Q. Have you met a Mr. Palmer of Millville, New Jersely, connected with the Palmer Trucking Company? A. I believe I did.

Q. Mr. Palmer, to refresh your recollection, stated that he went to the union hall with the defendant Gaughan some time in the month of April, 1937. Do you remember
6269 meeting Mr. Palmer in the union room about that time? A. I remember meeting him, but as to the time I wouldn't say for sure.

The Court: Was Gaughan with him?

The Witness: Yes, sir.

Q. Did Mr. Palmer tell you that he could not afford to pay $9.42? A. He did.

Q. Did you say to him, "Well, that is too bad; that is your hard luck. See, we have to keep going as well. We are looking after these men here in New York." Did you have any such conversation with him? A. Not exactly in that terms.

Q. Do you remember what you said, if anything? A.
6270 Yes, sir.

Q. What? A. He came up and he wanted to—I asked him if he wanted to sign a contract. He said, "Well, first I would like to find out something about it." "Well," I said, "that is perfectly all right." I said, "I got a contract over here. You can look it over, and," I said, "I will be with you in a moment," because I was finishing up some work I had myself to do. Then I said, "If there is any particular clause in there you don't understand I will only

be too glad to explain it to you." So, about fifteen minutes elapsed and I went back and asked him had he finished it up. He said no, but he would like to take it back with him and take it up with some party whose name he didn't mention. So I believe he stated that he couldn't pay $9.42. "Well," I said, "then, if you can't pay the $9.42 there is no sense of your signing a contract with us, because if you sign it we expect you to live up to it." I believe I left him in the presence of Flaherty then. I don't know exactly. I can't recall.

The Court: Who?

The Witness: Flaherty. I don't recall whether or not he took the contract with him or whether he signed it. 6272

The Court: He did sign it?

The Witness: I say I don't recall whether he took it with him or signed it.

Mr. Murray: May I have the government's exhibit, the contract signed by Palmer?

Mr. Marks: I think that is 48.

Mr. Murray: I just wanted to refresh the recollection of the witness. Apparently the exhibit is not here at the moment, your Honor.

The Court: Where is Exhibit 48?

Mr. Marks: It may be upstairs, your Honor.

The Court: Well, let us have it brought down.

Mr. Murray: That can be done during the recess, your Honor. 6273

Q. Mr. Campbell, while you were a delegate in this union from say January, 1937, to June of 1938, have you any way of telling how many people that you met each day connected with the union? A. How many men I met each day?

Q. What I want to know is were there a great number of people—

Mr. Cahill: Oh, I object to that.

The Court: Mr. Murray, don't lead the witness. I will exclude that question. Repeat the question put by counsel.

Q. (Second preceding question read.)

The Court: You can answer that yes or no.

A. No, there is no way I could specify.

6275 Q. How many transactions in the period of time I have mentioned have you taken care of in connection with union business during that period? A. Possibly a hundred a day.

Q. How many a day? A. Maybe thirty a day on different days. Trying to bring an average, I would say there were about forty.

Q. At this time have you any precise personal recollection of the conversations that you have had with different truck owners? A. No, sir.

Q. Or where you met them or when? A. No, sir, I could not.

Q. Do you recollect Mrs. Emily B. Libe of Phillipsburg, New Jersey, testifying here on May 1st? A. Yes, sir.

Q. Did you ever have any conversation with Mrs. Libe?

6276 A. I did.

Q. Do you recollect what the conversation was? A. I do.

Q. Will you be good enough to tell the jury as closely as you remember what it was?

Mr. Ennis: May the time and place be fixed, your Honor?

The Court: Yes.

By the Court.

Q. Where did it take place? A. It took place in the office.

Q. What date? A. The date I couldn't say, your Honor.

Q. Well, do you know whether she signed the contract or not? A. Not at that time, not with me.

Q. Do you know if she did sign one at any time with anybody connected with 807? A. I couldn't say; I couldn't recall that.

Q. You said you looked over all the contracts, didn't you? A. I didn't say I looked over them all, your Honor.

Q. Well, how do you know whether they were all signed 6278
by the persons you have stated they were signed by? A. Oh, I said I saw persons sign——

Q. Do you remember I asked you if you looked over the contracts? A. You asked me about——

Q. Do you remember if I asked you that question? A. You may have.

Q. Do you remember whether I did or not? I am trying to test your memory now. A. Well, I don't recall it in just that way, your Honor.

Q. Well, do you remember now if Mrs. Libe signed a contract at any time? A. I don't know.

Q. Well then, you can't fix a date of this conversation by that. That is what I was trying to get at. Now what can you fix it by, if anything? A. I only had five minutes 6279
conversation with her.

Q. Well, when was it? Do you know how many times she went to the office of the union? A. I only saw her that once.

Q. I didn't ask you that. I asked you if you knew how many times she went there. Did you ever hear of her being there any other time? A. No.

Q. Except the time you saw her? A. No.

The Court: We will take a recess now for five minutes.

(Short recess.)

By Mr. Murray.

Q. Mr. Campbell, do you remember having any talk with Donald Samuel Hunter, trucker out of Swedesboro, New Jersey? A. No, sir; I do not.

Q. Do you recollect ever having any talk with him at all? A. I don't recall any.

Q. There was testimony here that the defendant Magan
6281 went to the union rooms with Mr. Hunter and that Mr. Hickey, you and Mr. Devery were present when they arrived at the union rooms. Do you recollect that? A. No, sir, I do not.

Q. And Mr. Hunter in effect or substance testified that you told him that he could not get a truck unloaded in New York or the Metropolitan area unless he signed a contract? A. No, sir.

Q. Did you have that conversation with him? A. No, sir.

Q. And further he testified in substance, that you said to him that you and some fellows that you could contact would cause him some labor trouble in his own plant? A. I never spoke to him.

Q. And further that he stated that you said only one
6282 man could work on a truck? A. No, sir.

Q. But that a city employer would allow one man to work on two trucks provided he could do it in eight hours. Did you have such a conversation with him? A. No, sir, I did not.

Q. And he stated further that he offered Magan a check for the work he had done, and that you told Magan to hand the check back because it bore the notation "payment for unloading"? A. No, sir.

Q. Now, Mr. Campbell, have you any idea of how many others of Local 807 are employed by over-the-road truckers in New York? A. I would say somewhere around 3,000.

Q. And do you know how many over-the-road truckers, approximately, employ 807 men in the City of New York? A. I would say about 200 jobs.

Q. Could you name some of those over-the-road trucks who do employ Local 807 men in New York?

Mr. Cahill: Objected to as immaterial.

The Court: What is the purpose of this?

Mr. Murray: Well, if your Honor please, the purpose is to show that by far the great majority of large concerns that employ 807 men in New York have not been named in this indictment and have not testified against Local 807 men in this prosecution. 6283

The Court: Well, I do not think that is the way to show it.

Mr. Murray: Well, your Honor, I was laying a foundation by asking him if he can name some of those concerns.

The Court: I will sustain the objection.

Mr. Murray: I except.

Q. Do you know how many members there are in Local 807? A. 9,500 to 10,000.

Q. Now, Mr. Campbell, is Local 807 accustomed to having meetings at stated times? A. They have what they call regular monthly meetings. 6285

Q. Every month is it? A. It has not been for some time.

Q. Well, when your union met regularly was there a particular date each month? A. Yes, sir.

Q. Assigned for its meeting? A. Yes, sir.

Q. What date was it? A. The third Tuesday of every month.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. Mr. Campbell, what is the Austy & Willie Club? A. It is an association of drivers.

Q. To what individuals do the names in that title, "Austy & Willie," refer? A. Why, myself and Furey.

Q. Yourself and Austin Furey? A. That is right.

Q. Now, where does the Austy & Willie Club have its
6287 clubroom? A. It is not in existence today.

Q. Well, when did the Austy & Willie Club last have a clubroom? A. Oh, about—I will say about a year and nine months ago.

Q. And where was that clubroom? A. On Eleventh Avenue near 23rd Street.

Q. And how long was the Austy & Willie Club in existence? A. Approximately about three months.

Q. Who formed the Austy & Willie Club?

Mr. Murray: I object, if your Honor please, that it is immaterial and irrelevant.

The Court: Overruled.

Mr. Murray: Exception.

6288

A. Some of the drivers.

Q. 807 drivers? A. Not necessarily.

Q. Well, what drivers did form the Austy & Willie Club. Give us their names. A. Let us see: There was a fellow by the name of Toby Howe.

Q. Was he an 807 driver. A. Yes, sir.

Q. Give us the other names. A. There was another one by the name of Tierney, I think; Thomas Tierney.

Q. What was his occupation? A. I think he was a longshoreman, if I am not mistaken.

Q. And who else? A. I think those were the only two at that time because of the fact that they hadn't completely organized it where it might function properly.

Q. Now, who approached you about the use of your name, the "Willie" part in the Austy & Willie Club? A. Well, it is more or less an honorary title.

Q. Well, did anybody approach you and ask permission to use your first name in the Austy & Willie Club? A. Well, the Austy & Willie was not necessarily my name.

Q. Well, as a matter of fact, was it or was it not you and Furey who were referred to in the Austy & Willie 6290
Club? A. They asked us for permission, if they wanted to use it.

Q. Who asked you for permission? A. Well, these two men that I just mentioned and possibly a lot of others; I don't know who they were at the time; I don't recall the names.

Q. What is your best recollection? A. I could not recall it now if I wanted to.

Q. How many men belonged to the Austy & Willie Club? A. I could not tell you that because I didn't have any interest in the books or anything like that.

Q. Well, have you any idea how many belonged to it? A. I could not say.

Q. Did you pay dues in the Austy & Willie Club your- 6291
self? A. That is why it didn't function, because of the fact that there was no dues paid and they couldn't pay the rent.

Q. Who paid the rent at the time it was functioning? A. I don't know; I had nothing to do with the handling of the funds.

Q. You never asked anybody who was paying the rent of this club? A. No.

Q. Did you use to frequent the clubroom of the Austy & Willie Club? A. Only once.

Q. Only there once? A. Yes.

Q. Was Furey there at that time? A. No, sir.

Q. What was the occasion of your one visit to the Austy & Willie Club? A. Oh, they asked me to go up there and say a few words.

Q. Who asked you to go up there? A. A group of men.

Q. Well, give us the names of those men who asked you to go up. A. I don't know their names.

Q. Give us the names of anyone. A. I couldn't recall their names.

6293 Q. Well, how many men asked you to go up? A. I think there were two or three or four in a group.

Q. How long ago was this that you were invited to go up and say a few words to the Austy & Willie Club? A. Well, as nearly as I can recall, I would say about a year and a half or a year and nine months, or something like that.

Q. And did you go up? A. I did.

Q. And how many men were there? A. I would say about seventy.

Q. About seventy men? A. Yes.

Q. And did you say a few words? A. I did.

Q. And what was the subject of your talk?

6294 Mr. Murray: If your Honor please, I object on the ground that it is immaterial and irrelevant.

The Court: Overruled.

Mr. Murray: Exception.

A. I just wished them luck on their new clubroom.

Q. Anything else? A. That was the whole substance of my talk to them.

Q. How long did your talk take?

Mr. Murray: I object, if your Honor please.
The Court: Overruled.
Mr. Murray: Exception.

A. About five minutes.
Q. Who else was there? A. I don't know.
Q. Were you and Austin Furey the only 807 delegates who had anything to do with the Austy & Willie Club?

Mr. Murray: I object to the form of the question
The Court: Overruled.
Mr. Murray: Exception.
The Witness: Will you have the question repeated? 6296
The Court: Repeat the question.

Q. (Read.) A. I think so.
Q. Do you know who was the secretary of the Austy & Willie Club? A. I wasn't not interested that much in——

Mr. Calfill: I move to strike it out, if your Honor please.
The Court: Strike it out.
The Witness: I don't know.

Q. Do you know who the president was? A. I do not.
Q. Do you know who any of the officers were? A. No.
Q. Do you know who signed the lease for the clubroom? 6297
A. No.
Q. Did you ever hear of a place called The Pump? A. I don't think so.
Q. Never been in it? A. I would not say I haven't.
Q. Have you any recollection as to whether you have been there or not? A. I would say maybe, but I couldn't say any surer, yes or no.

Q. Did you ever frequent a place called Connelly's saloon? A. I frequent a lot of saloons.

Q. I am asking you about this particular one. A. Not that I recall.

Q. What were you doing in the period from 1930 to 1932? What was your occupation? A. 1930 to 1932?

Q. Yes. A. I might have been driving a taxicab at that time.

Q. I thought you said you had been driving trucks? A. I didn't say that——

Q. For the last how many years? A. I said I was a member of the union for 20 years.

6299 Q. But the fact is you were driving a taxi from what period of time? A. Oh, I don't know; off and on.

Q. Well, tell us now when did you start the taxi driving and when did you give it up? A. I couldn't tell you the date.

Q. Give us your best recollection. A. I can't recall.

Q. Well, was it a period of one year, two years, three years or four years? A. There was no definite time because it is a very uncertain occupation there, and you start to just driving them.

Q. Well, I am asking you over what period of time did you drive taxis? A. I will try to give you a figure of a year, but I couldn't say it is positive.

Q. What year was it? A. I won't say for certain.

6300 Q. What is your best recollection as to the year? A. I don't recall a definite year.

Q. Well, was it 1930 or 1931? A. I don't know.

Q. Have you any idea? What else did you do? Now tell us what you were doing in 1932. A. Well, I think, between driving trucks and driving taxicabs took up a five-year period; about a five-year period.

Mr. Cahill: I move to strike it out, if your Honor please.

The Court: Strike it out. Read the question.

Q (Read.) A. I can't recall the year.

Q. You have no idea of what you were doing in 1932? A. No, sir, I do not.

Q. Well, what were you doing in 1933? A. 1933, I believe I was driving a truck.

Q. For whom? A. For anybody I could get employment from, because it was kind of slow all over then in every industry.

Q. Well, were they local truckers? A. Yes.

Q. Give us the names of some of them that you drove for in 1933. A. Daniel Boland.

Q. How long did you drive for Daniel Boland? A. Well, about six months or so. 6302

Q. And whom else did you drive for in 1933? A. I think I drove for George S. Banta. That is a local truck operator.

Q. How long did you drive for Banta? A. Oh, about a year or so; maybe more.

Q. What did you do in 1934? A. In the year 1934 I believe I drove a taxi for about three or four months and whenever the opportunity was given to me. I——

Mr. Cahill: Now I move to strike that out.

The Court: I will allow him to finish his answer.

Q. Will you tell us for what taxi company you drove?

The Court: Just a moment. You asked him what he did in 1934. 6303

Mr. Cahill: Well, I want to get the name, if I may.

The Court: Well, all right. He said he drove a taxi for some months, and then he said he believes. Now I will allow him to finish his answer.

A. (Continued) And I believe I went out and I worked maybe a day or two days, or whatever I could get, on the

truck, and whenever there was a possibility, I took advantage of it because there was no money in taxis.

Q. What taxi company did you drive for in 1934? A. Terminal Taxi, Yellow Cab or the Luxor.

Q. All right. Now, what truckers did you work for in 1934? A. I think I worked with Wooster Express. I got a day or two there.

Q. Where is that located? A. LeRoy and Washington Streets. It is possibly a lot of other ones there, because we had to depend on a day or two here and there; so I can't offhand recall any right now.

Q. You cannot recall the name of a single other trucker
6305 that you worked for in 1934? A. That is right.

Q. Now let us take 1935: What were you doing in 1935? A. 1935?

Q. Yes. A. I was around, in the same way, whenever I would get a day.

Q. Can you name for us a trucking company that you worked for in 1935? A. I don't recall that.

Q. What was that answer? A. I say I don't recall that, but for a space of two months I did load onions on a dock.

Q. Can you tell us for whom you worked in 1936 then? A. Well, from about April, 1936, up until the time—I could go even a little before that if you wish to take up the space of that year?

Q. Certainly. A. I shaped the Consolidated during that time.

6306 Q. What time was that? A. Possibly in late 1935; and coming into the first of 1936, Laube Interstate Freight, and taking up about April, I believe——

Q. April of 1936? A. Yes, sir. I worked for the Syracuse Freight Lines.

Q. How long did you work for them? A. Up until the time I was elected officer and as delegate in 1937.

Q. That was at the end of 1936, was it not? A. That was in December, yes.

Q. Now, was the Consolidated the first interstate trucker you ever worked for? A. No, sir.

Q. What one before that? A. Laube.

Q. I thought you told us you worked for the Consolidated before? A. I said I shaped the bulk of the jobs.

Q. Well, Laube was the first interstate trucker you worked for? A. I believe so.

Q. Now, after you worked for Laube, the first interstate trucker, did you ever thereafter work for any local truckers? A. I don't believe there was much opportunity——

Q. Will you please answer my question? A. No, I did not.

Q. Now, did Furey and yourself run for the position of 6308
delegates in the same union election? A. No, sir.

Q. When was Furey elected? A. I believe some time around April, 1937.

Q. Isn't it a fact that Furey ran for election as trustee of the local in the same election that you ran for the position of delegate in the local? A. That is right.

Q. Now in connection with your campaign for the position of delegate, didn't you represent in writing that over-the-road trucks would not be allowed to come into New York without putting 807 men on, if you were elected delegate? A. I did not.

Q. After you were elected delegate didn't you take that position with over-the-road truckers? A. I did not.

Q. Didn't you tell over-the-road truckmen that they 6309
could not come into the City of New York unless they put 807 men on?

Mr. Murray: I object to the question as too vague and indefinite.

The Court: Sustained.

Q. Let us take John Palmer who operates J. Palmer Trucking Company. Did you have a conversation with Palmer in March of 1937? A. I believe I did. I don't know.

Q. Who brought Palmer in to see you? A. I believe it was a driver at that time. I believe he came in with him, I am not certain, though.

Q. With whom? A. I say he came in with a driver who was working for him at that time. I am not sure.

Q. Was it Gaughan? A. Well, if he was there, he was the one who was working.

Q. Well, didn't Palmer tell you at that time that his job was tied up? A. What do you mean by "tied up"?

Q. I am using the expression which has been commonly used by the witnesses throughout this trial. You have heard that expression used throughout the trial by various
6311 witnesses, have you not? A. I have, but I never used it.

Q. Didn't you use it yourself in regard to the conversation you say you had with Goddard on direct examination here fifteen minutes ago? A. No, sir, I did not.

Q. Now I ask you whether or not Palmer did not say to you in March of 1937 that his job was tied up? A. I don't recall him saying that to me.

Q. Do you recall Gaughan being there with Palmer? A. I said he may have been there.

Q. Now I ask you if Donald Hunter did not tell you in August or September of 1937 that his trucks were tied up? A. No, sir, I don't believe I spoke to Mr. Hunter.

Q. I ask you if in March of 1937 Joseph Buglio did not tell you that his trucks were tied up? A. I didn't speak to
6312 him neither.

Q. I ask you if Raymond E. Stiles of the Stiles Motor Freight did not tell you that his trucks were tied up? A. No, sir.

Q. I ask you if Mrs. Libe did not tell you in April of 1937 that her trucks had been stopped? A. I don't believe she conversed on that subject with me.

Q. I ask you if Frank Lo Biondo of Lo Biondo Bros. Motor Express in May, 1937, did not tell you that his trucks were tied up? A. No, sir.

Q. Did any over-the-road trucker ever tell you during the period from December 1, 1936, to June 1, 1938, that his trucks were tied up in the City of New York? A. Did we have a contract with them?

Q. Please just answer my question. Did any over-the-road trucker ever tell you that during that period, that his trucks were tied up in the City of New York? A. I would not be interested whether they were or not.

Mr. Cahill: I move to strike it out.

The Court: Strike it out. Answer the question.

A. No, not to my knowledge they didn't.

6314

Q. Not one over-the-road trucker ever told you during the entire period from December 1, 1936, to June 1, 1938, that his trucks were tied up in the City of New York? A. Not that I recall.

Q. You said that the union had not met for a considerable period of time on direct examination? A. That is right.

Q. Will you fix for us the starting and ending period of the time you referred to as the considerable period during which the local had not had a meeting? A. If you will permit me to go back for a while, I will get the month more sure.

Q. Do it either way. A. January of this year here was the first meeting that we had in about eighteen or nineteen months.

6315

The Court: You mean January, 1940?

The Witness: Yes, sir, of this year.

Q. So from the time you were elected to January, 1940, the union did not have one single meeting; is that true? A. No.

Mr. Maguire: I object to that.

The Court: I overrule the objection.

Mr. Maguire: Withdrawn.

Q. When was the last meeting of the union before January, 1940? A. When was the last one?

Q. Yes, before 1940. Was there any in 1939? A. No, sir.

Q. Did you hear a witness testify this morning that he attended two meetings in 1939? A. There was no meetings in 1939.

Q. Were there any meetings in 1938? A. Yes, sir.

Q. When was there a meeting in 1938? A. Around June
6317 of 1938, I believe.

Q. And prior to that time how were the meetings held? A. Once a month, every third Tuesday.

Q. Now taking the meetings prior to June, 1938, and going back to the time you were elected, which was in December, 1936, did you hear any conversation at any of those meetings about the over-the-road truckers being stopped when their trucks came into the City of New York? A. I believe the chairman at one time brought to the attention of the body in general the fact that there had been some complaints.

Q. Will you fix the time, please? A. Well, on three different occasions, three or four regular monthly meetings.

Q. All right. A. And I believe it was in—I believe it
6318 was about 1938, within a period starting from 1938 up until about—I just mentioned the meetings that stopped around June——

Q. Well, when would you say that the first of these complaints that you heard about occurred? A. I didn't hear nothing about them.

Q. Well, weren't you at the meetings? A. I told you, the chairman just brought that out to the body in general.

The Court: Well, that is what he is asking you. What was the first meeting at which mention was made by the chairman of a complaint?

The Witness: I believe around February.

Q. In February? A. That is right.

Q. And when next did you hear of complaints about over-the-road truckers being stopped in New York City? A. These were not complaints to our local union.

Q. Well, when next did you hear discussions in Local 807 meetings about over-the-road truckers complaining that they were stopped when they brought their trucks into the City of New York? A. There was no discussion, only that the chairman himself spoke about this to the body in general, advising them of the fact that it had been brought to the attention of a lot of people that these things had happened. 6320

Q. What things had happened? A. About the over-the-road trucker making a complaint to Washington.

Q. The over-the-road trucker what? A. I don't know the substance of that thing. He just said—he apprised the membership in general that they should not in any way be associated with anything like that.

Q. Associated with anything like what? A. With the over-the-road trucks that might have been interfered with.

Q. Was that said, that they were interfered with? A. Not exactly.

Q. Well, what was said? A. I just gave you the whole sense of it. 6321

Q. You said that the over-the-road trucker might have been interfered with? A. Yes.

Q. Was that said? A. It was only a supposition, because we had nothing to do with it.

Q. What was said? That is what I am trying to find out. A. I am telling you what the chairman told us. I am quoting from his conversation.

Q. Was there any other discussion at any time on this subject in the local meetings? A. I believe three times it was brought up and three of them were identical.

Q. When was the next time? A. Oh, I wouldn't say positively. I would say possibly about two months after February. That would make it around April.

Q. What was said then? A. The same thing.

Q. Who said it? A. Devery, the chairman of the union.

Q. When did it ever come up again? A. It might have been May or June.

Q. 1938? A. That is right.

Q. At or about the time of the last meeing of the local
6323 until this year, is that right? A. I wouldn't say that, whether it was the last one or not.

Q. At or about the time of the last meeting? A. Between that two months, possibly, it might have been.

Q. What was said on this third and last occasion about the stopping of the over-the-road trucks when they came into the City of New York? A. Well, the sense of the talk was the same.

Q. Who said it? A. The chairman.

Q. What did he say? Repeat it for us, if you will. A. I just told you that he apprised the membership of the fact that there had been a complaint in Washington. Not only he, but several other unions might have been notified of this thing here, and if they could help——

Q. Of what? A. About interfering with these trucks.
6324

Q. What did he say about that? A. That is all he did say. He didn't say nothing—he didn't go into generality—into specific cases; he just spoke in generalities.

Q. Well, repeat as closely as you can now remember—A. I did repeat it here.

Q. —what he said about interfering with interstate trucks? A. He didn't mention nothing about interstate trucks at all.

Q. Well, over-the-road trucks then. A. He just said somebody might have been interfering with them, and he wanted all our members at least not to be associated with anything like that at all.

Q. Aside from these three occasions you have no recollection of this subject ever coming up for discussion at a meeting of Local 807 throughout the period from December 1, 1936, to June 1, 1938, is that true? A. I do not.

Q. Was there anything said in any of these meetings as to the particular part of a given borough in the City of New York where the interstate trucks were being stopped? A. No, sir.

Q. Is it your testimony here that it was never stated that it was on the west side of the Borough of Manhattan that these interstate trucks were being interfered with? A. Repeat that question. 6326

The Court: The stenographer will repeat the question.

Q. (Read.) A. I would say that this condition never happened in New York in any borough——

Q. Now, will you please answer the question?

The Court: Strike it out.

Mr. Cahill: I move to strike out the answer.

The Court: The stenographer will repeat the question. 6327

Q. (Re-read.) A. I would say yes.

Q. It was never stated? A. That is right.

Q. And you at no time had any idea that over-the-road trucks were being stopped on the west side of Manhattan during the period from December 1, 1936, to June 1, 1938; is that also the fact? A. I did not.

Q. Now, you told us on direct examination that you were so busy that you could not remember different people that you saw during the day, isn't that true? A. That is right.

Q. That sometimes you handle as many as 100 complaints in a single day, isn't that true? A. No, sir.

Mr. Murray: I object. That wasn't the testimony.

The Court: It is cross-examination. The witness can say no if it isn't a fact.

The Witness: No.

6329 Q. Did you see as many as 100 people in a given day? A. Yes.

The Court: What the witness said was he had 100 transactions.

Mr. Cahill: Yes, your Honor.

The Court: Then he corrected that to say thirty some days, or an average of forty.

Mr. Cahill: That is my recollection, your Honor.

Q. In connection with this work that you have told us about you were going up and down the west side of the Borough of Manhattan during this period of time, weren't you? A. That is right.

Q. Your work was concentrated on the west side of the Borough of Manhattan, isn't that true? A. Not neces-
6330 sarily.

Q. Well, what territory did you have specifically assigned to you as delegate? A. Staten Island.

Q. What else? A. The entire west side, part of the Bronx.

Q. The west side, what borough? A. West side of Manhattan.

Q. And throughout this period from December 1, 1936, to June 1, 1938, you were intimately familiar with what

was going on in the trucking industry on the west side of the Borough of Manhattan, isn't that true? A. Only those things that applied to my business as a delegate in Local 807.

Q. You were up and down the streets on the west side of the Borough of Manhattan throughout this entire period, weren't you? A. Possibly.

Q. Well, what is the fact? Were you or were you not? A. I might have been if business called me there.

Q. What is your recollection now of the fact during this period from December 1, 1936, to June 1, 1938? Were you or were you not engaged in business which took you up and down the street to the west side of Manhattan? A. I would say most of the time was spent in that area. 6332

Q. And during that entire time did you ever see an over-the-road truck stopped? A. I did not.

Q. Did you ever see that an over-the-road truck had been stopped? A. I did not.

Q. Now, Mr. Campbell, at the time you ran for delegate, did you have a committe operating in your behalf? A. There was a committee operating for everybody, I guess.

Q. No. I am speaking now of the particular ticket on which you ran. A. Directly, no, sir.

Q. Well, you ran against somebody, didn't you? A. Not directly, no.

Q. Wasn't there an opposing slate of men who sought to be delegates in this local? A. The incumbent officers. 6333

Q. And your group was opposed to them in the election, isn't that true? A. That is right.

Q. Did you have a name to your ticket in this election? A. No, sir.

Q. You didn't call yourself the Gold Standard Ticket? A. That was the title applied to all the other officers who were running against the incumbent officers.

The Court: Were you on that slate?
The Witness: Yes.

Q. Weren't you running on the Gold Standard slate? A. That is right.

Q. Didn't you have a campaign committee for that ticket? A. I suppose the drivers themselves, because they wanted these people elected there, why, they more or less put out a ticket.

The Court: Well, did the Gold Standard ticket have a committe to further its interests?
The Witness: No, sir.

6335

Q. You never heard before of the campaign committee of 500 on behalf of the Gold Standard ticket in this election where you were made a delegate? A. I did not.

Q. In connection with your campaign did you have rallies and meetings and the usual literature? A. I suppose so.

Q. And you were on the ticket, were you not? A. I was one on the ticket.

Q. Did you ever see any literature advocating the election of that slate which pledged that not a single gypsy will ever be allowed to deliver in this City? A. I don't recall that.

Q. Well now, you were active in this campaign, weren't
6336 you? A. I was not.

Q. Didn't do anything to promote— A. That is right.

Q. —your election? A. I did.

Q. You were active then, weren't you? A. I was, by speech.

Q. By speeches? A. That is right.

Q. You never saw any literature put out on behalf of your ticket in which it was pledged that not a single gypsy

would be allowed to deliver in the City of New York if you were elected? A. I did not, no.

Q. Never heard that discussed during this campaign? A. No, sir.

Q. When you were running for office? A. I did not.

Q. When was the first time you ever did hear that gypsies were having difficulties delivering in the City of New York? A. I never—I don't recall that.

Q. What is that? A. I don't recall it.

Q. You have no recollection whatsoever? A. No.

Q. When was the subject first discussed with you by anybody? A. It wasn't, because I had no interest in it.

Q. Then it was never discussed with you? A. No. 6338

Q. At any time? A. That is right.

Q. Were you delegate on the west side and this subject of stopping over-the-road trucks was never discussed by you with anybody at any time. Is that your testimony? A. I told you if they had a contract with 807 then it would be brought to my attention.

Mr. Cahill: I move to strike it out.

Q. Will you please answer the question?

The Court: Listen to the question.

Q. (Read.) A. That is right.

Mr. Cahill: May I have this marked for identification. 6339

(Paper marked Government's Exhibit 72 for Identification.)

Q. I show you Government's Exhibit 72 for Identification and ask you to read it over carefully, if you will please? A. (After examining paper) I don't believe I ever saw that before.

Q. You are quite sure of that? A. Absolutely.

Q. Well now, did Furey campaign with you during this election, Austin Furey? A. That is right.

Q. He went around and made speeches where you made speeches, didn't he? A. That is right.

Q. And you heard his speeches? A. That is right.

Q. Did you ever hear Austin Furey make reference in any of his speeches to the over-the-road trucks? A. I did not.

Q. Who else made speeches in this campaign for union officers when you were running? A. I guess everybody on the slate: Devery, Hickey, Brennan, Igoe, Clarke,
6341 Schwartz, John Hughes, Gene O'Brien.

Q. By the way, what territory, if any, did they have? Let us take these men individually. What territory did they have to administer? Let us take Gene O'Brien. A. Gene O'Brien was trustee. His only function was executive at the meetings.

Q. Take the next name will you, please? A. Devery was president. He conducted——

Q. All right. Take the next name. A. Thomas Hickey.

Q. What was his job? A. Secretary and treasurer of the union; also acting business agent or delegate.

Q. What territory did he have? A. He had Long Island and Brooklyn.

Q. Long Island and Brooklyn? A. Yes.

6342 Q. Take the next one. A. Michael Igoe.

Q. What territory did he have? A. South Brooklyn.

Q. Take the next one. A. Thomas Clarke.

Q. What territory did he have? A. Covering the East Side.

Q. The East Side of what? A. The East Side, starting here from the Battery.

The Court: We have had all that. From the Battery up to the Bronx.

Q. What was the next one? A. Furey; the West Side.

Q. Of Manhattan? A. And myself.

By the Court.

Q. Wait a minute. I understood you to say that Furey did not run for delegate until May, 1937. A. I mean I just mentioned it—I possibly made a mistake.

Q. Well, what was Furey running for in December, 1936? A. Trustee.

Q. What did he have? A. In December?

Q. Yes. A. No, he didn't run, your Honor, until April of that year. In December he ran for trustee. I beg your pardon. 6344

Q. He ran for trustee? A. That is right.

Q. Now, when he ran for trustee, what territory did he have? A. Well, he was only one of the executive board, your Honor. They didn't act.

Q. The same as O'Brien? A. Yes. They were inactive officers.

By Mr. Cahill.

Q. When Furey became a delegate was that an additional position that was created in or about April, 1937? A. That is right.

Q. At the time Furey was elected a delegate in April, 1937, he, too, was assigned to the territory on the West Side of Manhattan, isn't that true? A. That is right. 6345

Q. So you and Furey between you had charge of the West Side of Manhattan for Local 807 from April, 1937, on? A. In that respect, yes.

By the Court.

Q. Did you and Furey have jurisdiction over the same territory after he became a delegate in May, 1937? A. That is right.

6346 Q. And before that you had that territory unassisted? A. That is right. It was too much for one man to cover that area, from Staten Island up, and they had a new election there for an additional delegate; two, in fact; Igoe and Furey.

Q. One moment. I don't get that. What about Igoe? A. They had an additional—they had need of an additional delegate.

Q. You mean they had need of an additional delegate on Long Island? A. They had two of them, your Honor, but one was Brooklyn. One was for the West Side territory

6347 Q. But Igoe was appointed on Long Island or elected for Long Island? A. From Brooklyn, yes.

Q. To assist Hickey? A. That is right.

Q. He had nothing to do with Manhattan? A. No, sir.

Q. Furey was elected— A. To come over with me.

Q. To come in the district where you were? A. Yes.

Q. To help you out? A. Yes.

Q. So there were two additional delegates created in May of 1937? A. That is right. April, 1937.

Q. April, 1937. One on Long Island and the other for Staten Island and the West Side of Manhattan, and the West Side of the Bronx? A. That is right.

By Mr. Cahill:

6348 Q. How long had you know your fellow delegate, Austin Furey? A. Oh, about twelve years approximately; fourteen years.

Q. Had you and Austin Furey worked on jobs together prior to December 1, 1936? A. I worked on his job. When I say his job I mean a job that he was employed on, possibly about three times. The only reason I got employment there——

Q. No, no.

Mr. Cahill: I move to strike out anything else.

The Court: Strike it out.

The Witness: All right.

Q. Now, during the period from ~~April, 1937~~, to June 1 1938, did you and Furey go around together or separately on the business of the union on the West Side of Manhattan? A. Well, sometimes we went out separately and sometimes together.

Q. Well, now, do you recall an occasion at the Liberty Forwarding Company in the spring of 1938 when Furey received a telephone call from Goddard of the Brookline Trucking Company? A. I don't exactly recall about the 6350
telephone, but Furey was down there with me when I spoke to Goddard in Brookline, but he didn't enter into the conversation there because I was speaking to Goddard.

Q. I am referring to an occasion when Furey was at the Liberty Forwarding Company and while there received a telephone call from Goddard of the Brookline; do you recall that occasion? A. No, I don't.

Q. When for the first time did you learn that Charles Arthur Brown, the negro, had been beaten up in the spring of 1938?

Mr. Murray: I object to the form of the question.

The Court: I will sustain the objection.

Q. Did you hear in the spring of 1938 that a negro, 6351
Charles Arthur Brown, had been beaten up in the premises of the Brookline Trucking Company? A. I read it in the newspaper.

Q. When did you read it? A. I will tell you the date. I guess the first day it came out.

Q. What action did you take as delegate after you read it? A. None—as delegate?

Q. Yes. A. There was nothing brought to my attention. So I couldn't take any action on it.

Q. You say you read it in the newspaper the day after it happened? A. Yes.

Q. I press you: What did you do about it after you read it? A. I done nothing.

Q. Did you ask Furey about it? A. I did not.

Q. Did you ask any of the Local 807 men employed on that Brookline job about it? A. No.

Q. You did nothing about it? A. That is right.

Q. Will you tell me, limiting the time period again from December 1, 1936, to June 1, 1938, one job where you and Furey together settled a dispute? Just give us the name of one. A. All right. Adley's Express, Connecticut.

6353 Q. Adley's Express? A. That is right.

Q. What is the address? A. They are located on the corner of Houston and Greenwich Street.

Q. What time of the year was this? A. Well, I should judge about, say around August or so.

Q. August of what year? A. 1938.

Q. By the way, how did Furey and you travel about the West Side? On foot? A. No.

Q. By automobile? A. Yes.

Q. How many men would accompany you and Furey as you made your way about the West Side by automobile during the period after Furey became a delegate and up to and including June 1, 1938? A. What do you mean by "accompany"?

Q. In the car? A. Certainly I had a car.

6354 Q. How many men would you have in the car with the two of you? A. Furey and I, if we went alone.

Q. How many men on the average would you carry in the car with you?

The Court: Were there occasions when there was anybody in the car with you? That is what he is trying to find out.

Mr. Cahill: Yes.

The Witness: When we were out on our work? No.

The Court: You and Furey were all alone?

The Witness: Yes.

The Court: Nobody was ever with you?

The Witness: No, unless there might have been some driver downtown who was going up from the union hall and we would give him a lift up.

Q. Did you and Furey go together to the Liberty Forwarding Company to settle a dispute? A. Oh, I believe we went up there together.

Q. When did you go to the Liberty Forwarding Company to settle a dispute? A. I couldn't tell you the time on it. 6356

Q. Have you been there more than once together? A. We might have been, but I think Furey was up there a couple of times alone, and I might have been up there a couple of times alone, also.

Q. To settle disputes? A. That is right.

Q. Do you recall a particular occasion when you went with him to the Liberty Forwarding? A. Well, I don't know. When you "particular occasion"——

Q. A specific occasion. A. In regard to a dispute?

Q. When you and he went there to settle a dispute. A. Yes, we went down there.

Q. When did you and he go there together? A. I couldn't give you the date of it. 6357

Q. Was it in the year 1938? A. It might have been.

Q. Who was the shop steward in the Liberty at that time? A. Bill Simpson.

Q. Do you recall the people at Liberty asking for arbitration on the occasion when Furey and yourself visited there? A. Asking for it?

Q. Yes. A. They might have.

6358 *William Joseph Campbell—For Defendants—Cross.*

Q. And do you recall saying to them, "Furey and I will be the arbitrators." Do you recall that? A. I do not.

Mr. Murray: I object to the question, if your Honor please.

The Court: I will allow it.

Mr. Murray: Your Honor, he is referring to the people.

The Court: The witness says there was no such conversation.

Q. Do you recall meeting a man by the name of Walter Stanton in October, 1937? A. I don't believe I know anybody by that name.

6359

Q. Well, he was a driver for Donald Hunter. A. No, sir, I don't think so.

Q. Do you recall having been at R. C. Williams & Company throughout the period September and October, 1937? A. I believe I was in there once.

Q. Do you recall talking to drivers there on that occasion? A. No, I do not.

Q. Do you recall talking to Franz LoBiondo? A. LoBiondo?

Q. LoBiondo—L-o-B-i-o-n-d-o. A. I spoke to LoBiondo, but I don't know about the name Franz.

Q. When did you speak to LoBiondo? A. I don't know the time, but I know the place if you want that.

6360

Q. What was the place? A. Up in the office of Local 807.

Q. Do you recall a discussion with LoBiondo about one man unloading more than two trucks? A. I do.

Q. Do you recall telling LoBiondo that one man, one 807 man would not be allowed to unload more than two trucks? A. I don't recall that, no.

Q. Did you ever say that to anybody? A. No, sir, I did not.

Q. Do you recall telling LoBiondo if he wanted any additional men his No. 1 man would pick them for him? A. I don't know. When you say the word "pick"——

Q. Select is what I mean. A. Well, that might be.

The Court: Engage.

Mr. Cahill: Engage, your Honor, yes.

The Witness: That might be proper in that sense, providing the man had a union book. It would be his right to charge him—I mean ask him whether he had a book in the union because otherwise if the contract was in, he couldn't work on the job unless he had a union book.

6362

Q. The question I am directing to you is do you recall telling LoBiondo, couldn't select 807 men or couldn't engage 807 men to work on his truck? A. I don't recall saying that to him.

Q. Do you recall telling LoBiondo that his No. 1 man would have the right to engage or select the 807 men who would work on the LoBiondo trucks when they came into New York City? A. Well, naturally that would be if they were acceptable to him.

Q. Will you please answer the question? Do you recall telling that to LoBiondo? A. I am trying to answer the best possible way. I can't do anything else.

Q. Well, tell us, do you recall telling that to him? A. No, I don't.

6363

The Court: We will suspend now, and I have a brief announcement to make to the jury.

Earlier in the day counsel for the defense informed me that they had arranged to bring in here tomorrow morning certain witnesses and it was stated that they, or some of the defendants' counsel at least, had not had an opportunity to talk with

these witnesses and didn't know whether they would have an opportunity to do so after the adjournment this afternoon, or whether, if not, there would be ample time to do so in the morning before the trial resumed. It was also stated by defense counsel that if that opportunity were afforded them to confer with these expected witnesses, it was felt that the progress of this trial could be speeded up. My own experience teaches me that the latter is a very strong probability. Under those circumstances and in the exercise of what I consider to be proper discretion I shall adjourn this trial now until Friday morning
6365 at 11 o'clock, and I am very hopeful that as a result of this intermission instead of losing any time that we will gain time in bringing the trial to a sooner conclusion.

The jury are now excused until Friday at 11 o'clock, and I desire to see counsel, of course, on Friday morning at 10 o'clock.

Mr. Cahill: Will your Honor instruct the witness not to speak to anybody until the cross-examination is finished?

The Court: Yes. The witness is directed not to talk to anyone about his testimony until the cross-examination is completed. He will then be given an opportunity to confer with his counsel before the
6366 redirect examination, if there is to be any, is taken up.

(Adjourned to May 17, 1940, at 11 A. M.)

New York, May 17, 1940,
11 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.)

WILLIAM JOSEPH CAMPBELL, resumed the stand and further testified as follows:

Cross-examination (continued) by Mr. Cahill.

6368

Q. On Wednesday afternoon, Mr. Campbell, do you recall my putting to you this question and your making this answer on page 2547: "Q. And you at no time had any idea that over-the-road trucks were being stopped on the west side of Manhattan during the period from December 1, 1936, to June 1, 1938; is that also the fact? A. I did not." Do you recall my putting that question to you and your making that answer? A. Yes, sir.

Q. Now I ask you if it is not the fact that at a regular monthly meeting of Local 867 held on April 20, 1937, you reported that the men who were chasing hill billies were not interested in securing a contract or work but in the $9.41, and that it was becoming a shakedown racket that must stop. Did you so report? A. I probably did.

6369

Mr. Cahill: That is all.

The Court: Any redirect?

Redirect examination by Mr. Murray.

Q. Well, if you did, did you allude to any of those defendants who are sitting here now on trial?

Mr. Cahill: I object to the form.
The Court: Sustained.

Q. Did you make such a report? A. I probably did.
Q. Did that involve any of the men here on trial?

Mr. Cahill: I object to the form.
The Court: Sustained.
Mr. Murray: Exception.

Q. In that report did you refer to any of those men here on trial?

6371 Mr. Cahill: I press the objection.
The Court: Sustained.
Mr. Murray: Exception.

Q. Now, you recollect that on Wednesday you were asked by the prosecutor concerning the calling of meetings. Do you recollect that? A. That is right.

Q. Did you have anything to do with calling meetings? A. No, sir.

Q. Who called meetings? A. The executive board or the chairman.

Q. And who was the chairman? A. Mr. Devery.

Q. Who was the executive board? A. It consisted of Mr. Flaherty, Mr. O'Brien, Mr. Hughes and Mr. Schwartz;
6372 and the secretary and treasurer Mr. Hickey.

Q. Could you call meetings on your initiative? A. No, sir.

Mr. Murray: That is all.
The Court: Anything further?
Mr. Cahill: Nothing further.
Mr. Murray: If your Honor please, I move to strike out the questions and the answers elicited in the cross-examination of this witness in relation to

the Austie and Willie Club on the ground that it is irrelevant, immaterial, and does not touch the issues in this indictment.

The Court: Denied.

Mr. Murray: Exception.

The Court: That is all. Witness excused.

(Witness excused.)

Mr. Murray: Samuel Reichler.

SAMUEL REICHLER, residing at 7 Foster Street, Newark, New Jersey, called as a witness on behalf of defendants, being duly sworn, testified as follows: 6374

Direct examination by Mr. Murray.

Q. Mr. Reichler, what is your occupation? A. Chauffeur.

Q. On what kind of a vehicle? A. Tractor and trailer.

Q. Do you mean a truck or a passenger car? A. Truck.

Q. And how long have you had a license to drive a truck in New York? A. About twelve years.

Q. Are you a member of Local 807? A. I am.

Q. And when did you become a member of that organization? A. In the early part of 1938.

Q. Mr. Reichler, do you recollect that on April 18th there was testimony here from a witness here named Robert E. A. Boyle, who described himself as a former agent of the Federal Bureau of Investigation? A. I do. 6375

Q. And you recollect that he testified that he met you at Procter & Gamble's distribution plant at Port Ivory, Staten Island, about April 11, 1938? A. That is right.

Q. Were you present on that occasion? A. I was.

Q. Will you be good enough to tell the jury what brought you to that place at that time? A. I had heard a few days

previously that my brother was working over at Procter & Gamble's. Therefore I went over there to try and seek employment.

Q. And what is your brother's name? A. Morris.

Q. Is he one of the defendants in this case? A. Yes, he is.

Q. Yes? A. And I went up to the gate to see my brother to inquire how he secured the employment there, and the gateman would not let me in. I then went to the employment office and I inquired about a truck driver's job——

Q. Now, when you say "employment office", what office do you refer to? A. The Procter & Gamble employment
6377 office; and they told me that they did not operate any of their own trucks, and that Motor Haulage did all their trucking for them; for me to go over to New York to Motor Haulage office to see whether they would employ me.

I then went across the street into a restaurant, and I forget just what I ordered, but I was there a few minutes and a truck pulled up, a driver came in, and he ordered a cup of coffee. And the owner of the restaurant said to him, "Is that all you ever have, coffee? "Well," he said, "We haven't got much time to have anything else. We haven't got any time to eat."

So I spoke to the driver of the truck, and asked him if he was busy enough—if his boss was busy enough to hire any extra help; and he told me that his boss promised to give him some help and he has not done it up until now.
6378 So I asked him where his New York office was, and he told me they did not have any New York office. So I asked him where he came from, and he told me he came from Allentown. So I asked him whether he could give me his employer's address or telephone number, which he did; and he then left, and he says, "Well, I hope you get it." And that was the end of the conversation there.

Q. Then after that conversation what next did you do or say? A. Well, I then called his employer in Allentown

Q. Whom did you call from there? A. He gave me the name Hummel. I called and a girl answered the phone. I asked her could I talk to Mr. Hummel. She asked me my name. I gave it to her and she connected me with him then and I asked him if he had any work for me. He asked me how I happened to call him. So I told him I spoke to one of his drivers and he told me to call him. So he asked me if his driver was there and I said no. He said, "Where did he go?" I said, "I don't know." He said, "You wait there about fifteen or twenty minutes and I will call you back." He called me back in about a half hour and asked me if I was a member of any union and I told him yes. He asked me what local I belonged to. So I 6380
told him 478. He said, well, he couldn't put me to work if I worked—I was a member of 478, but if I could get a transfer into 807 he would hire me. So I told him I didn't know if I could do that or not. So he said, "Well, go ahead and try it. If you can get a transfer call me back and I will put you to work." So I told him I would. That was the end of that conversation.

Q. Well now, after that conversation, did you see Mr. Hummel? A. No, I didn't see him after that conversation.

Q. Did you ever see Mr. Hummel? A. Yes, I did.

Q. Before you saw Mr. Hummel did you have a talk with the witness Robert E. A. Boyle in Staten Island? A. Before I saw Hummel?

Q. Yes. A. No. I had seen Hummed previous to that.

Q. You mean you had seen him or had talked to him on 6381
the telephone? A. I had seen him.

Q. Well now, at the time that you saw Mr. Boyle, did you have any conversation with Mr. Boyle? A. When I saw Mr. Boyle? Yes; I had a conversation with him.

Q. Will you tell us what that conversation was, please? A. Well, could I explain the circumstances that made me speak to him?

Q. Well, where were you when you first saw Mr. Boyle in Staten Island? A. Mr. Huimmel had sent up word——

The Court: No. Where were you?

The Witness: In Staten Island.

The Court: Whereabouts?

The Witness: At the entrance to Procter & Gamble's plant.

Q. When you were there before that day had you talked to Mr. Hummel? A. Yes, I had.

Q. How long before? A. About a week, I imagine.

Q. Did you talk to him personally? A. Yes.

6383 Q. Where had you seen him? A. At his office in Allentown.

Q. Was there anything that caused you to go to Allentown? A. Yes.

Q. What was it?

Mr. Ennis: Objection as calling for a conclusion, your Honor.

The Court: I will allow him to state.

A. I had sent word down with the road driver to have Mr. Hummel come up to sign a contract with Local 807.

Q. What was the name of the road driver? A. I only know his first name. I think his name was Hughie.

6384 Q. Did you have a conversation with the road driver Hughie? A. Yes, I did.

Q. What was the conversation? A. I told him being that I was working for Hummel I would like to have him come up and sign a contract with Local 807 and he said he would refer that back to Mr. Hummel. The following day—no, it wasn't the following day, but a few days later Hughie came back and told me that Mr. Hummel wouldn't come up here to sign a contract, if he were to sign a con-

tract we should bring it down there, and that was the reason for me to go down to Allentown.

Q. How did you go there? A. By car.

Q. When you got to Allentown did you see Mr. Hummel? A. I did.

Q. Can you fix approximately the date when you saw Mr. Hummel in Allentown? A. Probably about the week of the 20th of May or April, rather; I forget just which month it was.

Q. What year was that? A. 1938.

Q. Did you see Mr. Hummel? A. I did.

Q. Did you have a talk with Mr. Hummel? A. I did.

Q. Will you tell us what was said by you and what 6386
was said by him? A. Well, I walked in and the girl asked me who I was——

The Court: No. You were asked about the conversation with Mr. Hummel. Never mind about the girl.

The Witness: I told him I brought the contract down that he wanted. He told us to sit down and he read the contract and he told me—he asked me whether I could leave it there for a few days, he had to show it to someone. I said, "Certainly." And before I left I asked him when he thought he would have it mailed back and he said in a few days. That was all that was said.

6387

Q. Well, now, do you recollect that Mr. Alfred I. Hummel of Allentown, Pennsylvania, testified here in court on May 2nd during this trial? A. Yes, I remember that.

Q. Do you recollect that Mr. Hummel testified in substance about a telephone conversation that he had with you in which Mr. Hummel said that you said on the telephone that from that time on, alluding to February, 1938, the time of the conversation, that from that time on he was

to pay $9.42 a day for the privilege of having a helper at the Staten Island plant and that he asked you what for? Do you remember him testifying to that here? A. I never had any conversation——

Q. Do you remember Mr. Hummel testifying to that? A. Yes.

Q. Did you have any such conversation with Mr. Hummel? A. No, I never had a conversation like that with him.

Q. Then Mr. Hummel further testified in substance that you said well, that was something new that they were inaugurating and all you could say about it was that he
6389 had to pay you from then on. Did you have any such conversation with him? A. No, sir.

Q. Mr. Hummel testified further in substance that he said to you that he knew nothing of it and would have to investigate? A. No, I never had any conversation like that with him.

Q. Do you recollect that Mr. Hummel also testified that in that conversation you said to him that he could do as he pleased, but hereafter each day he was to send down $9.42 for the privilege of getting your services as a helper? A. No, sir.

Q. Do you recollect further that Mr. Hummel testified in substance that he told you that at that time he hadn't thoroughly made an investigation and he didn't think he was going to pay? A. He never said anything like that
6390 to me.

Q. Do you recollect that he testified that you said to him, "I think you will"? A. No, sir.

Q. Do you recollect that Mr. Hummel testified that he asked you if you thought it was a threat? A. I only had two conversations with him.

Q. Did you have any such conversation with him? A. No, sir.

Q. Do you recollect that Mr. Hummel further testified when he asked you whether or not it was a threat that you said he could take it for what it was worth and that if he didn't have the money down there in three days that you didn't think his trucks were coming back? A. No, sir.

Q. Now, do you recollect that Mr. Hummel in his testimony here stated in substance that you called him again and wanted to know why he hadn't sent down the third payment? A. The third payment?

Q. Do you recall his testimony here to that effect? A. I never said anything like that.

The Court: No. What he asked you was if you remember that Hummel said that. 6392

The Witness: Yes, I remember that conversation.

Q. Did you have any such conversation with him about a third payment? A. No, sir.

Q. And do you recollect that Mr. Hummel said on that occasion that he told you that he thought it appeared as if it were blackmail and graft and he didn't intend to pay any more and that furthermore he didn't know whether you people belonged to any union or not for the reason that he called up Local 807 in New York three or four times that week? A. I didn't have any conversation with him like that.

Q. Do you recollect that Mr. Hummel further testified that he was in his warehouse in Allentown about that time 6393 and he saw two men in the office and that you were one of them and that he walked up to you and asked you what you wanted. Do you recollect that testimony? A. Yes, I recollect that testimony.

Q. Do you recollect the testimony of Mr. Hummel that they, meaning the two men, threw a piece of paper on the table and said, "Here is a contract for you to sign"? A. I remember the testimony, but that is not the way it was.

6394 *Samuel Reichler—For Defendants—Direct.*

Q. Well, when you went and saw Mr. Hummel in Allentown will you please tell us as closely as you remember what was said? A. Well, that was the first time I had met him. I gave him the contract and told him that was the contract that he wanted us to bring down and he said—he told us to sit down and he read it. Then he said he would have to show it to someone; if we could leave it there for a few days; and I said, "Certainly," and before I left I asked him when he thought he would have it mailed back and he said in a few days, and then I left.

Q. Do you recall that in this court Mr. Hummel testified that on that occasion he, Hummel, said to you, "As
6395 far as I am concerned the conversation is finished." A. I didn't say that.

Q. And do you recollect that Hummel testified that you and your brother Morris said, "Not until you sign the contract"? Did you have that conversation with him? A. No, sir.

Q. Do you recollect that Mr. Hummel testified that he escorted you to the door? A. I remember the testimony, but he didn't escort us to the door.

Q. Did it happen that way? A. No, sir.

Q. Now, do you recollect that Mr. Hummel testified on March 27, 1938, in this court, that he received another telephone call from Sam Reichler and that Sam Reichler said he had waited long enough for his money? Did you have that conversation? A. No, sir.

6396 Q. Did you have any such conversation with Hummel? A. The only conversation I had with him—the last conversation was where he owed me three days' pay and he told the road driver, the same road driver, that I was fired, and he owed me three days' pay and I called him up and asked him for it, and he said for me to get it from the road driver, being that they wanted me to work for Hummel and he said he wouldn't pay me for it.

Q. Now, do you recollect that Hummel further testified in this court that at about the same time that you said to him that you were getting tired of waiting for your money and Hummel told you in that conversation that he felt that the whole thing was restraint of trade and it stank of graft and racketeering, and that he did not intend paying? A. No, sir, he never told me anything like that.

Q. Do you recollect that Hummel testified that he said, "If you don't pay your trucks are not coming back there"? A. No, sir.

Q. Did you have such a conversation with Hummel? A. No, sir.

6398

Q. Now, where are you working at present? A. Saul Trucking Company.

Q. Where is their place of business? A. 446 West 26th Street.

Q. How long have you worked there?

Mr. Cahill: Objected to as immaterial.

The Court: I will allow it.

A. Well, about two years.

Q. Did you stop Hummel's trucks? A. No, sir.

Q. Did you tell Hummel or any other truckman that they would have to pay you? A. I never stopped Hummel's trucks and I never stopped anybody else's trucks.

6399

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. Did you say that you first went over to Procter & Gamble's plant in Staten Island in April, 1938? A. No, I believe it was the latter part of March.

Q. Did you say further that Mr. Hummel said that he would not employ you because you were not a member of Local 807? A. Yes, sir.

Q. And is it a fact that he did not employ you until after you were a member of Local 807? A. That is right.

Q. When, for the first time, did you become a member of Local 807? A. The first day I got my transfer, that is the day I called him up and he told me to go to work.

Q. Well, what was the time? Have you got your book with you? A. Yes.

Q. Look at it, please, and tell us when you joined Local 807. A. March 2, 1938.

6401 Q. Now, were you working for Hummel prior to that time? A. No, sir.

Q. Are you sure of that? A. Well, that is the date I got my book.

Q. Didn't you represent to Hummel on earlier occasions that you were a member of Local 807? A. No, sir.

Q. Isn't it a fact that you worked for Hummel before you were ever a member of Local 807? A. No, sir.

Mr. Cahill: I ask that this be marked for identification.

The Court: Mark it.

(Marked Government's Exhibits 73-A and 73-B for Identification.)

6402 Q. I show you the reverse side of Government's Exhibit 73-B for Identification, and I ask you if you know whose handwriting appears thereon? A. It looks like mine.

Q. Is it yours? A. Well, the first name don't look like mine, but the second name is.

Q. I show you Government's Exhibit 73-A for Identification, and ask you if you have ever seen the original of that before? A. I don't think so.

Q. Did you have any correspondence with Hummel at that time? A. No, sir.

Q. Never had any correspondence whatsoever with him? A. No, sir.

Q. And you never saw the original of Government's Exhibit 73-A for Identification? A. I never received any mail from Hummel.

Q. I press you if it is not the fact that you were working for Hummel in February, 1938, before ever you joined Local 807? A. No, sir.

Q. How long had your brother been a member of Local 807? A. I would not know that, to be exact.

Q. Now, did Hummel ever tell you that he was paying 6404
you under duress? A. No, sir.

Q. Did Hummel ever tell you that he was paying you under protest? A. No, sir.

Q. Did Hummel ever tell you that he did not regard you as an employee of his? A. No, sir.

Mr. Cahill: I ask that these two papers be marked for identification.

The Court: Mark them 74 and 75.

(Marked Government's Exhibits 74 and 75 for Identification.)

Q. By the way, what was your home address in March of 1938? A. It was either on South Munn Avenue or 6405
Tillinghast Street, one of the two.

The Court: What city?

The Witness: One was—South Munn Avenue was in Irvington, and the other one is in Newark.

The Court: New Jersey in both instances?

The Witness: Yes.

Q. What was the number on South Munn Avenue? Was it 175? A. I cannot remember the number.

Q. I show you Government's Exhibit 74 for Identification, and ask you if you received the original of that?—A. I never received any mail from Hummel.

Q. Have you read it? A. Yes, I read it.

Q. All right. I show you Government's Exhibit 75 for Identification and ask you if you received the original of that? A. No, sir.

Q. Who was your 807 delegate on Staten Island? A. Who was the delegate? I don't know who the delegate was.

Q. You haven't any idea? A. No, sir.

Q. How often did you go to union meetings? A. I have
6407 only probably been to about two or three of them.

Q. Over what period of time? A. From the time I joined up until this present date.

Q. When was the first meeting you ever attended? A. Probably the first meeting they had after I attended—after I joined, rather.

Q. When was that? A. In March, I guess, 1938.

Q. Was there a meeting in March of 1938? A. I am pretty certain there was.

Q. You are quite clear about that? A. Well, I think it was the first meeting they had after I joined.

Q. But your recollection is quite clear that there was a meeting in March of 1938? A. I would not say it was March; it might have been April, but the first meeting that I knew of after I had joined.

6408 Q. Who sponsored you for membership in 807? A. No one.

Q. Your brother was already a member, was he not? A. That is right.

Q. Now, these loads that Hummel freighted to the Procter & Gamble Company, were they the so-called straight loads? A. Well, he came in empty there. He had delivered his load in Jersey somewhere.

Q. So that that which took place at the Procter & Gamble plant was a pickup; is that right? A. Yes, the loadings of the trucks.

Q. And how long would it take to load one of his trucks at the Procter & Gamble platform? A. Well, he had five small trucks; it would take about an hour or an hour and fifteen minutes.

The Court: You mean for each truck?

The Witness: For each truck; and then he had one trailer; it will probably take about two hours.

Q. Now, how many of these trucks did you ever drive? A. I am sorry. Can I have the last question repeated? 6410

The Court: Yes. Repeat the question.

Q. (Read.) A. I drove all of them.

Q. Where did you drive them? A. From outside the plant into the plant.

Q. How much of a distance was that? A. Oh, about a block.

Q. And for that you demanded driver's wages rather than helper's wages, didn't you? A. Well, I drove the truck——

Q. Well, will you answer the question? Because you drove a block, so you say, from immediately outside the gate to immediately inside, you demanded driver's wages rather than helper's wages; isn't that true? A. That is true. 6411

Q. What was the difference between driver's wages and helper's wages on a daily basis, if you please? A. About a dollar and one cent, I think.

Q. Do you recall having this conversation with this F. B. I. agent Boyle? You do, do you not? A. Yes, I do.

Q. What was the date of that? A. I believe it was the latter part of March—well, it might have been either the latter part of March or the first part of April.

Q. And after you talked to the F. B. I. agent did you ever thereafter work for Hummel? A. No, sir.

Q. Did you ever thereafter frequent the Procter & Gamble plant? A. Yes, sir.

Q. But you never worked for Hummel? A. No, sir.

Q. Now, tell us what you were doing immediately prior to joining 807; what was your occupation? A. Truck driver.

Q. Where were you driving and for whom? A. Previously to working for Hummel, do you mean?

Q. Previous to going over to the Procter & Gamble plant. A. Well, I had not been working for quite a

6413 while then.

Q. Well, how long was it before you had anything by way of employment prior to that time? A. Well, I was in the trucking business with my father.

Q. Give us the dates on that, will you? A. I have been in the trucking business with my father from since 1928 up until about 1936, I think.

Q. Working regularly? A. Well, there was a time there I could not work on account of my back, but otherwise it was pretty regularly.

Q. And what was the name of this trucking company? A. King Motor Transportation.

Q. Where did it have its headquarters? A. We had an office in Boston; we had an office in New York.

Q. Which office did you work in? A. I worked in both

6414 of them.

Q. And with the exception of this time when you had back trouble, you were working all the time from 1928 to 1936; is that true? A. That is right.

Q. Driving a truck all that time? A. Yes.

Q. What did you do from 1936 to 1938? A. I worked for Saul Trucking Company for a while, and I worked for American——

Q. Just give us the dates on the Saul Trucking, if you will. A. Well, I am not very clear about the dates, but I know who I worked for during that time. I worked for American Transportation, I think it is, which is over in Newark.

Q. American Transportation? A. Well, I don't think it is "Transportation." I forget what they call it. And that is about all, I think.

Q. All right. Now, give us the dates of these two employments, if you will. A. I am not very clear on the dates.

Q. But you are sure that those employments covered the period from 1936 to 1938; is that true? A. I believe so. 6416

Q. You were not idle any part of that time, were you? A. Well, I was idle for a while.

Q. What were you driving in these trucks between 1936 and 1938? A. Mostly wax paper that they use for wrappers on bread.

Q. Anything else? A. Well, we picked up spools for the rolls that they would use on the paper.

Q. Anything else? A. And when I worked for Saul we carted mostly everything.

By the Court.

Q. For whom were you working— A. Between 1936 and 1938—— 6417

Q. No; you have just spoken about the wax paper. A. That was the American Trucking Company.

Q. Where did you haul from and to? A. We hauled from Newark to all parts of New York City.

Q. When you worked for Saul where did you haul from and to? A. Sometimes in Jersey and sometimes in New York, in the city.

Q. Is Saul located here or is he located in New Jersey? A. Well, Saul is located here, but when he has any loads to be delivered in New Jersey, he leaves the truck in Harrison and when he has it in New York, they send it back again.

By Mr. Cahill.

Q. Have you ever been convicted of crime? A. Yes, sir.

Q. When and where were you convicted? A. About five months ago, I think.

Q. And of what charge were you convicted? A. I don't know what they call the charge, but I got convicted for
6419 hauling molasses, as far as I know.

Q. What was the charge? A. I don't know what they call it; I don't know what they call it.

Q. Well, did you plead guilty or stand trial? A. Well, I stood trial one day and then my lawyer told me to plead guilty, and I did.

Q. Well, what were you charged with? A. Well, I don't know what they call it.

Q. You haven't any idea as you sit there what the crime charged against you was? A. No, sir.

Q. Well, where were you arrested on that charge? A. I wasn't arrested. They told me to come down to the Commissioner's office in Newark, and I came down, and they put me under bail.

6420 Q. Was that a United States Commissioner? A. Yes, sir.

Q. It was in the federal court in Jersey, wasn't it? A. Yes.

Q. And these commodities you were hauling were on a truck, were they not? A. Yes.

Q. And whose truck was that you were driving? A. It was either one belonging to myself or to my father.

Q. When was that? A. About 1935, I think; 1936, maybe; the early part of 1936.

Q. Isn't it a fact that it was in the year 1937? A. I don't think so.

Q. Well, didn't you say a few minutes ago that this conviction occurred just a few months ago, five months ago as I recall your statement? A. I did.

Q. And is your recollection so dim on this matter that you can't tell us what you were charged with? A. No, I don't know what they call it.

Q. Was it a conspiracy to violate the internal revenue laws of the United States? A. Something about the internal revenue laws, something about that.

Q. Don't you know whether it was or not? A. No, I don't know. 6422

Q. You haven't got the faintest idea of the crime charged against you at a trial that occurred just five months ago? A. No; I don't know what the legal term for it is. All I know I was hauling molasses and they locked me up for it. That is the only time I ever got locked up.

Q. Where were you hauling this cargo of molasses? Let us take it first, where did you pick it up? A. Sometimes we pick it up——

The Court: No. He speaks of this particular molasses on this occasion, if you know.

The Witness: No, I don't know.

Q. You don't know where you picked up this load? A. I know where we used to pick up the loads. 6423

Q. No. Where did you pick up this load that you were locked up for? A. I don't remember.

Q. Where were you delivering? A. I don't remember where I was going. We went to various different places. I don't know where it was.

Q. You haven't got the slightest idea either where you picked it up or where you delivered it? A. At the time I was locked up?

Q. Yes. A. No, I wasn't locked up. They had—an F. B. I. man came around and told me to go down to Commissioner's Holland's office the next day, and I did.

Q. Were your charged alone or together with others in this charge that was made against you? A. No, there were others, I think.

Q. Well, was it a conspiracy charge that was lodged against you? A. I don't know what they call it.

Q. You haven't got any idea? A. No, sir.

Q. Now, when you received checks from Hummel, is it your testimony that there was never a letter accompanying them? A. I don't think I ever got any letter from Hummel, no. All I got was the checks.

6425

Mr. Cahill: I will ask that this be marked for identification in two parts, if I may.

The Court: Mark them Government's Exhibits 76-A and 76-B for Identification.

(Marked Government's Exhibits 76-A and 76-B for Identification.)

Q. Did you have a mail box at this South Munn Avenue address that you gave us a while ago? A. Yes.

Q. Did you receive checks from Hummel through the mail? A. Yes, sir.

Q. I show you Government's Exhibit 76-A for Identification, and ask you if you recognize the handwriting on the reverse side of that? A. I do.

6426

Q. Whose handwriting is it? A. It is mine.

Q. I show you Government's Exhibit 76-B for Identification, and ask you if you received the original of that the same time you received Government's Exhibit 76-A for Identification? A. I never received any mail from Hummel.

The Court: No, that is not the question.

The Witness: No, I don't recognize that.

The Court: You were asked about this particular paper that you have in your hand now.

The Witness: I recognize this signature, but I don't recognize the letter.

Q. Well, did you receive it or not at the same time that you received the other exhibit for identification? A. No, I did not.

Mr. Cahill: I will ask that this paper be marked for identification.

The Court: Mark it 77.

(Marked Government's Exhibit 77 for Identification.) 6428

Q. I show you Government's Exhibit 77 for Identification, and ask you if you received the original of that? A. No, I never received it.

Q. Now, is it your testimony here that Hummel never told you that he regarded your demands for payment as graft? A. No.

Q. Is it your testimony here that Hummel never told you that he regarded the payment to you as a protection against racketeering? A. No, sir.

Mr. Cahill: May I have a moment, please?

The Court: Yes.

6429

Q. Reverting to this crime of which you say you have been convicted, did you tell us that that was just five months ago that you were convicted? A. Yes, I think it was about five months ago.

Q. Well, were you convicted on an earlier occasion? A. No, sir; that is the only time I was ever convicted.

Q. Were you convicted in the state court? A. No, sir.

Q. As a disorderly person? A. No, sir.

Q. Was there a state court charge levied against you at this time? A. No, sir.

Q. Did you plead guilty to any charge on or before May 4, 1938? A. Maybe for a traffic violation; that is all I know of.

Q. Reverting to this trip to Allentown, first, was that the only visit to any over-the-road trucker that you ever made outside of the City of New York after you became a member of Local 807? A. That was the only place, only trucker I visited outside the City of New York.

Q. And who was with you on that occasion? A. My brother.

6431 Mr. Cahill: Nothing further.

The Court: Any redirect?

Redirect examination by Mr. Murray.

Q. Mr. Reichler, when did you join the union in New Jersey? A. I think it was in 1936 or 1937.

Q. What was the number of that local? A. Local No. 478, Newark.

Q. Did the union represent drivers? A. Yes, sir.

Q. Truck drivers? A. That is right.

Q. Now, you told the United States Attorney that you were convicted for hauling molasses, is that right? A. That is right.

Q. On that conviction what sentence was there from
6432 the Court?

Mr. Cahill: Objected to as immaterial.

The Court: I will allow it.

A. Three years' probation.

Q. Did you get a suspended sentence?

Mr. Cahill: I object to it as already answered.

A. I don't know what it was——

The Court: Overruled.

The Witness: All I know is it was probation.

Q. Now, in connection with the hauling of molasses, do you know what the Government charged was done with the molasses? A. What the Government charged?

Q. What did the Government say had been done with this molasses that you hauled? A. Oh, they claimed that it was turned into alcohol.

Q. Did you have anything to do with turning it into alcohol? A. No, sir.

6434

Mr. Cahill: I object to that.

The Court: Sustained.

Mr. Murray: Exception.

Mr. Cahill: I move to strike out the answer.

The Court: Strike it out.

Mr. Murray: That is all.

The Court: All right. We will recess now.

(Short recess.)

(The clerk called the roll of the defendants and all were present.)

WILLIAM H. HARRIS, 3d, recalled as a witness on behalf of the defendants, having been previously sworn, testified further as follows: 6435

Direct examination by Mr. Maguire.

Q. Mr. Harris, you are connected with the Salem Express? A. Yes, sir.

Q. Do you recall having testified here in this case on May 3rd and May 6th? A. Yes, sir.

Q. At that time do you recall having testified that you had conversations with Mr. Katz, Max Katz, one of the defendants? A. Yes, sir.

Q. And do you recall that you also testified that you made payments to Katz for unloading services? A. Yes, sir.

Q. Do you recall that you testified that it was your best recollection that these matters occurred prior to May 31, 1938? A. Yes, sir.

Q. Now, have you been served with a subpoena duces tecum to produce your records? A. Yes, sir.

Q. Have you produced those records pursuant to the
6437 subpoena? A. Yes, sir.

Q. Now, did you examine those records? A. Yes, sir.

Q. And after having examined those records can you tell us what is the first record of payment that you have to Max Katz? A. September, 1938.

Q. In the light of that, what is now your best recollection as to the time when you first made a payment to Katz? A. September of 1938.

Q. And with reference to the conversations with Katz, what is your best recollection as to the approximate time? A. Well, I don't remember about the time. It may have been before or after. My best recollection is it was prior, but I wouldn't say. I have no record to indicate.

Q. In any event, it is now your best recollection that the first payment made to Katz was September of 1938?
6438 A. Yes, sir.

Mr. Maguire: That is all.

Mr. Marks: May we have a moment, your Honor?

The Court: Yes.

(Government counsel confer among themselves.)

Cross-examination by Mr. Marks.

Q. Mr. Harris, prior to May 31, 1938, who was your No. 1 man in New York? A. William Farrell.

Q. Now, were there occasions when Farrell was not the only 807 man to work on your trucks? A. Yes, sir.

Q. Who selected the extra men when the extra men were needed? A. Farrell.

Q. Now, will you tell us how payments were made to those extra men? A. Mostly they were made directly by checks to the men or checks were sent to Farrell. The checks mostly were made out to the men.

Q. Were there occasions when the checks were not made out to the men themselves? A. Yes, sir.

Q. To whom were the checks made out on those occasions?

Mr. Maguire: I object to that. 6440

The Court: I will allow it.

Mr. Maguire: Exception.

A. We have found in our records items where we have paid Farrell for two days in one where he has claimed two days' pay for one, for somebody else that we didn't know.

Q. That is for an extra man he hired for that day? A. Yes, sir.

Q. And on those occasions Farrell himself paid the money to the extra man? A. We assumed that he did.

Mr. Marks: That is all.

The Court: Well, just a moment. 6441

By the Court.

Q. Have you thought about the testimony you gave here when examined by the United States Attorney as a witness on his side of this case? A. No, sir.

Q. Since you were here? A. No, sir.

Q. When were you first served with a subpoena that brings you here today? A. Wednesday afternoon about 5:30.

Q. Since that time have you been reflecting upon the testimony that you gave on your previous occasion as a witness in this case? A. No, sir.

Q. Haven't thought about it at all? A. No, I haven't given it a whole lot of thought.

Q. Have you made any effort to search your mind and satisfy yourself as to when the defendant Katz first came to work on any trucks operated by the Salem Express? A. I searched our records as to what we could find we paid to Katz and I thought by doing that it might refresh my memory as to the particular time that Katz went to work for us. However, we have so many of these men on differ-

6443 ent occasions——

Q. Well, what is your best recollection now as to when Katz went to work for you in relation to the date when you found a record of the first payment to him? A. It is my recollection—I feel he went to work for us early in 1938. However, I got no record to show that he did. I have records to show where I paid for help, but I don't have the names. We have the records where——

Q. Well, what is your recollection now as to the first conversation, the time of the first conversation you ever had with Katz? A. Some time early in 1938 is my recollection.

Q. Well, have you thought anything about that since you were served with this subpoena last Wednesday? A. Well, about Katz?

6444 Q. Yes. A. Yes, I thought about it.

Q. Have you done anything to try to refresh your recollection? A. As to pay or as to conversations?

Q. As to the time when you first had any conversation with him. A. Yes.

Q. Or as to the time when he first went to work on any of your trucks? A. Well, I am not so sure—I am pretty sure—I am rather definitely sure that we didn't pay him until we issued a check to him, but as to conversations, I am positive we had conversations.

Q. Well, is it your opinion now that he worked for you before or after the first payment that you made by check? A. After. If I was to make a definite statement I would make it on what my records show rather than my memory.

Q. Well, you are not prepared to say now that Katz worked for you on your trucks before the date of the first payment made to him by check? A. I wouldn't commit myself that he had worked prior to our issuing a check, from my memory.

Q. But your testimony is that you talked with him before that? A. Yes, sir.

Q. Now, can you say how long before that first check it was that you had the first conversation with Katz? A. 6446
I would say some time in the spring of 1938.

Q. Well, how many months elapsed between the first conversation that you had with him and the first check that you made payable to him? A. Possibly three to four months. You see——

Q. Well, would you say that it was before Decoration Day or after Decoration Day? A. I would say it was before Decoration Day.

Q. Of 1938? A. Yes, sir.

Q. Have you no means of further refreshing your recollection? A. As to conversations?

Q. Yes. A. No, sir, not unless something came up that bring it out.

Q. Well, is there anything in your files that would refresh your recollection? A. I don't believe so. 6447

The Court: All right.

By Mr. Marks.

Q. Do you remember when, for the first time an 807 man worked on your trucks in New York? A. In January. As nearly as I can recall, in January, 1937.

Q. Now, can you tell us with respect to that time approximately when you first talked to the defendant Katz? A. Well, it was possibly a year after that.

Q. Do you remember where you first saw him? A. On the corner of Varick and Laight Streets.

Q. Who else was present? A. Oh, there was quite a crowd of them down there at that time. Farrell, Venditti —I am not sure about Venditti; I know Farrell was there. I remember Farrell being there and Needelmann and some colored lad; I don't know his name. I believe his name was Davis, and four or five other men. It seemed that they all congregated around that corner around the time we
6449 drove in around 8 or 9 o'clock in the morning.

Q. Is that where your trucks generally met 807 men? A. Yes.

Q. At Varick and Laight? A. Yes.

Q. How did your trucks come into the city?

The Court: One moment. I will exclude that. You are not going to try the case over again.

Q. What was the conversation you had with Katz? A. Just a general conversation about what they were trying to make us do.

Q. Can you tell us what he said? A. Well, I more or less talked to Katz rather than him approaching me. Katz never approached me on any kind of work; it was more
6450 or less a general conversation with Katz. As I recall Katz was working for somebody else and when I would see him he would be in when the other man wasn't there; that is, the other truck wouldn't be there; I mean when the man he was working for wouldn't be there Katz and these fellows would be around the corner of Varick and Laight Street with the men we had.

Q. Do you remember how often you saw him there? A. I would say every two or three weeks; whenever I got into New York. It was most generally there.

Mr. Marks: That is all.

Mr. Murray: No further direct.

(Witness excused.)

WALTER L. LARKIN, recalled as a witness on behalf of the defendants, having been previously sworn, testified further as follows:

Direct examination by Mr. Murray.

Q. Mr. Larkin, what is your occupation? A. Bookkeeper. 6452

Q. For whom? A. Truck Drivers Union Local 807.

Q. How long have you occupied that position? A. Twenty-one years.

Q. Now, Mr. Larkin, what is the address of the union room of Local 807? A. Room 202, 74 Varick Street, New York City.

Q. What building is that room in? A. Corn Exchange Bank Building.

Q. What floor is it on? A. On the second floor.

Q. Now, would you be good enough to describe to the jury the door of the entrance to the offices of Local 807? A. There is a public hall which you walk through from the elevator; you pass a dentist's office; you pass a druggist's office; then you come to Room 202. As you enter 6453 that room——

Q. Now, just a moment. A. Yes?

Q. To get into Room 202 what sort of door do you pass through? A. The entrance to 202 from the hall is a metal door with glass panels about half the height of the door.

Q. Do you know whether or not during the hours observed by the union in that office the door is locked or unlocked? A. Well, the door is always open; that is, the lock door.

Q. If a person desires to enter does he have to sound a buzzer or do anything else? A. No. To enter the outer door from the hallway, all that is necessary is to turn the handle.

Q. And walk in? A. And walk in.

Q. Now, when you get inside the door connecting Room 202 with the public hallway what kind of room do you find yourself in? A. After you have entered the door from the public hallway you come to a space of possibly 4 or 5 feet. Then you meet a partition, wooden partition, which is about 6 feet high and which is opened from the 6 feet to the ceiling another possible 3 foot—4 foot; in that
6455 partition there are two cashier's windows and on the extreme right a door opening into the office proper.

Q. What does the office proper, as you describe it, consist of? A. Well, it consists of a high top bookkeeping desk in back of the partition; two flat top desks in the center of the floor; one practically in front of the window; there was a safe; there was a cabinet, a telephone booth and a number of chairs.

Q. Now, Mr. Larkin, a lady named Mrs. Emily B. Libe of Phillipsburg, New Jersey, testified in this court on May 3 that she went to the union rooms and that she met you and that she had a conversation with you? A. Yes.

Q. Do you recollect having met Mrs. Libe on that date? A. I recall that a lady accompanied by one of our members, who was Edward Franz, appeared at the cashier's
6456 window and said that they wanted to sign a contract—that she wanted to sign a contract. It was called to my attention, I went to the door there in the partition and asked her to come inside. I brought her in. She sat in the chair alongside of the desk that I used.

Q. Now, that room that she went into: Will you try to give us a description of that room? A. Give you a description?

Q. Of that room. A. Well, as I described before, it contained a high top bookkeeping desk, it contained a safe, it contained a supply cabinet, a telephone booth, a table upon which was a rack containing the ledgers and possibly a dozen chairs.

Q. Now, the door of entry that Mrs. Libe went through to gain access into that room: Was there a lock on that door? A. The door has a lock, yes.

Q. What character of lock? A. Well, it can be opened by hand from the inside or by a push button attached to the high top bookkeeping desk.

Q. Well, what is the character of lock on that door? Is it a lock that you use a key to open? A. No. It is a 6458
snap lock.

Q. By that you mean a Yale lock? A. It is a Yale lock. You have to use a key from the outside to get in.

Q. But if you were inside— A. If you were inside it can be turned by hand or by pressing the button.

Q. An ordinary Yale lock? A. Yes, sir.

Q. Is there a lock on that door which only could be opened by inserting a key on the inside or outside and turning the key? A. There is a lock of that kind on the door, but there was no key. It was never used.

Q. Mrs. Libe has testified here on May 3rd that she had a conversation with you in which she substantially stated, or stated in substance, that she asked you what it was going to cost her or what she could do to get her mer- 6459
chandise delivered. Do you remember that conversation? A. Not in those words, no.

Q. Do you remember what was said? A. The intent of her coming there, as she described it, was for the purpose of signing a contract.

Q. She further testified in substance that you said to her that she would have to have a man on each truck regardless of the length of time it was in New York. Did you have such a conversation with her? A. No, I did not.

Q. And further she testified that she asked about an hourly rate. Do you remember such a conversation? A. When she spoke about signing a contract I presented her with copies of it.

Q. No; I am asking you whether you remember that conversation? A. I don't remember it, but no doubt it would be part of her talk.

Q. She stated further that she asked you if she could interview and hire a man whom she felt suitable to work for her, and that you told her that there were two men there to serve her trucks and that was all she could do about it? A. No.

6461 Q. Did you have such a conversation with her? A. No, not in reference to those men. There was a similar conversation in reference to an officer of the union.

Q. Mrs. Libe further testified on May 3rd that she was shown a contract, but because she tried to find out what it was all about and what she was signing, that you became very angry and attempted to strike her with an envelope. A. An absolute lie.

Q. Will you tell this jury, Mr. Larkin, how long you talked to Mrs. Libe when you saw her on the occasion which you described? A. I think my conversation with her took a possible ten minutes.

Q. Mrs. Libe further testified in substance that the door through which she entered to this room where she saw you was locked on the outside and she could not get out; is

6462 that true? A. That is not true, no.

Q. After you talked to Mrs. Libe, do you know whether anyone else talked to her? A. Yes.

Q. Who? A. Mr. Flaherty.

Q. And what was Mr. Flaherty's position at that time? A. He was a trustee, an officer of the union.

Q. Mr. Larkin, will you look at Government's Exhibit 52, which is a contract dated May 12, 1937, between Emily

B. Libe and Local 807. Were you present when that contract was signed? A. I was.

Q. Was there anybody else present? A. The man who signed it, Mr. Flaherty; in the immediate office was my assistant and Mr. Alfred Franz, and outside of the partition were possibly three or four men, including a Mr. Edward Franz, who is now in her employ.

Q. After you had talked with Mrs. Libe for ten minutes do you recollect whether or not you then left her presence? A. After I explained the contract to her and she had asked for concessions, feeling that the hours were too short and the money was too dear, she brought up the idea—she asked me if I was an officer, and I said no; and 6464
she left me with the impression that——

The Court: No, don't tell us about your impression; you can tell us what she said.

The Witness: I mean she asked to see an officer.

Q. Yes. Then what did you do? A. I said that I would get one for her. Mr. Flaherty was inside, and I asked him to come out.

Q. Did Mr. Flaherty come into the room where Mrs. Libe was? A. He did.

Q. Did you remain there then? A. I was in the same room, yes.

Q. All the time that Mr. Flaherty was there? A. Yes. 6465

Q. And Mrs. Libe? A. Yes.

Q. Could you tell us whether or not, Mr. Larkin, Mrs. Libe was in that room for three hours? A. No, I don't believe she was.

Q. And whether or not she was locked in that room? A. She was not locked in there; nobody is actually locked in there because people go in and out.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. You describe yourself as a bookkeeper, Mr. Larkin; is that correct? A. That is right.

Q. You exercise rather unusual powers for a bookkeeper, do you not? A. No. I don't seem to think so.

Q. Well, there are several exhibits here marked in evidence showing that you on occasions signed contracts on behalf of Local 807? A. That is true.

Q. Was this occasion about which Mr. Murray questioned you the first occasion on which you had heard of Mrs. Libe? A. I believe it was. I believe so.

6467 Q. You never heard of her before? A. I don't think so, no.

Q. Do you recall detectives from Police Headquarters having visited you in regard to a complaint that Local 807 were driving the trucks, Mrs. Libe's trucks, negligently?

Mr. Murray: I object, if your Honor please.

The Court: Sustained as to form.

Q. Do you recall having a conversation with a detective of the New York City Police Department in April, 1937, as to how the trucks of a certain company were being operated by 807 men in the City of New York? A. I do not recall a particular conversation, no.

6468 Q. Have you had such conversations with members of the New York City Police Department? A. Yes.

Q. Isn't it the fact that shortly before you saw Mrs. Libe on the occasion about which Mr. Murray questioned you, that a detective of the New York City Police Department came in and told you that Mrs. Libe's insurance company had complained to Mrs. Libe that the insurance company had observed 807 truck drivers negligently operating Mrs. Libe's vehicles on the west side of Manhattan?

Mr. Murray: I object, if your Honor please.
The Court: Sustained.

Q. Isn't it a fact that a detective of the New York City Police Department had transmitted to you a complaint as to the negligent operation of Mrs. Libe's trucks by 807 drivers?

Mr. Murray: I object, if your Honor please.
The Court: Sustained.

By the Court.

Q. Did you ever have any conversation with any representative of the New York City Police Department about Mrs. Libe's trucks? A. None that I recall, no, sir. 6470

By Mr. Cahill.

Q. Do you recall having a conversation in April, 1937, with detectives of the New York City Police Department that 807 men who had very little experience in handling large trucks, were driving them on the west side of Manhattan?

Mr. Murray: I object, if your Honor please.
The Court: Sustained.

Q. Isn't it a fact that you referred to this complaint by Mrs. Libe to the Police Department in opening your conversation with her in May of 1937? 6471

Mr. Murray: I object, if your Honor please, on the ground that——

The Court: I will sustain the objection, but you may strike out the word "this" and insert the adjective "a."

Mr. Cahill: I will amend the question accordingly, your Honor.

Mr. Murray: If your Honor please, I press my objection further on the ground that there is no such evidence in the record when Mrs. Libe was a witness in this case.

The Court: Let the question be read as amended.

(Question read as follows: "Q. Isn't it a fact that you referred to a complaint by Mrs. Libe to the Police Department in opening your conversation with her in May of 1937?")

6473 The Court: The objection is overruled.

Mr. Murray: Exception.

A. I don't recall such conversation.

Q. Have you absolutely no recollection as you sit here now that you made reference to a conversation that you had had with a New York City police detective shortly before Mrs. Libe came into the 807 offices? A. I have no recollection at this time, no, sir.

Q. Absolutely none? A. No, sir.

Mr. Cahill: That is all.

Mr. Murray: That is all. Thank you, Mr. Larkin.

(Witness excused.)

6474

JOHN FLAHERTY, residing at 277 West 11th Street, New York City, called as a witness on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Flaherty, what is your occupation? A. Business agent of Local 807.

Q. And how long have you held that occupation with 807? A. As a business agent since 1940, January 1st.

Q. 1940? A. January 1st.

Q. And before 1940 did you occupy any position with the union? A. As a trustee from April 4, 1937.

Q. Before that did you occupy any position— A. I was a shop steward of Consolidated Motor Lines since 1929.

Q. How long have you been a member of Local 807? A. 1936, I think it was—1935.

Mr. Murray: May I have Exhibit 52, if you please?

(Mr. Marks hands a paper to Mr. Murray.) 6476

Q. Mr. Flaherty, will you look at Government's Exhibit 52, bearing date of May 12, 1937, which is a contract between Emily B. Libe and Local 807, and I direct your attention to the signature under the caption "For Local 807." Do you see that signature? A. Yes.

Q. Is that yours? A. Yes, sir.

Q. Your name is John Flaherty? A. John Flaherty.

Q. And you signed this for Local 807? A. Yes.

Q. Mr. Flaherty, in May, 1937, just what were your duties for Local 807? A. I was a trustee and I was on the organizing committee.

Q. Just what kind of work did you do? What were your activities? A. One was to audit the books once a month and also to assist them in the office. 6477

Q. Do you recollect seeing Mrs. Libe in the union premises on May 12, 1937? A. I do.

Q. Do you recollect what part of the premises you saw her in? A. Room 202.

Q. When Mrs. Libe entered room 202 did you or anyone to your knowledge put a key in the door of the lock and turn it on the outside, locking the door? A. No, sir.

By the Court.

Q. Well, were you in the room which a person enters from the street when Mrs. Libe came in there? A. No, sir.

Q. Where was she when you first saw her? A. When I first saw her she was in room 202. I was in room 203.

By Mr. Murray.

Q. In relation to room 202, where is room 203? Is it nearer the public hallway or further away from the public hallway? A. It is about the same distance. The door which I was looking through, looking out at an angle right
6479 from the hallway, closer.

Q. Was there a door between room 202 and room 203? A. Yes, sir.

Q. Do you know whether or not at the moment that you saw Mrs. Libe that door was opened or closed? A. It was wide open, because I could see her from 203.

Q. What are the furnishings of 203? A. 203 is the executive board room. It consists of a table and a lot of chairs, mostly, and two or three shoe trees, which is coat hangers; that is about all.

Q. Now, when you leave the premises from room 203 what door do you use? A. We use the hallway door.

Q. Well, is there a door that opens directly from 203 into the hallway? A. Yes, sir.

6480 Q. Was there a door that opens directly from 202 into the hallway? A. Yes, sir.

Q. And is that a public hallway? A. Yes, sir.

Q. When you first saw Mrs. Libe in 202, do you recollect who was present there? A. I could say Mr. Franz, who is Mr. Larkin's assistant, Mr. Larkin, myself, and two or three drivers outside the partition.

Q. In room 203 was there anyone in there with you at that moment when you saw Mrs. Libe? A. Yes; there

was a driver from Consolidated Motor Lines I was talking to at the present time in 203 when Mr. Larkin approached me.

Q. Do you know whether or not from where Mrs. Libe sat in room 202— A. She sat at the nearest——

Q. Just a moment—that if she looked through the doorway of 203 whether or not you were within the line of vision? A. Yes, sir.

Q. When you saw Mrs. Libe in 202 was she in conversation with anyone so far as you know? A. No, sir.

Q. Did you see Mr. Larkin there? A. Yes, sir.

Q. Did you hear any conversation between her and Mr. Larkin? A. No, sir.

6482

Q. Now, how long, if you know, was Mrs. Libe in room 202 before you spoke to her? A. Well, they told me she was there about fifteen minutes waiting for me, so far as I know, before I got in.

Q. Waiting for you? A. Yes.

By the Court.

Q. Who told you that? A. Mr. Larkin.

By Mr. Murray.

Q. And did you talk to Mrs. Libe? A. Mr. Larkin approached me——

Q. Yes or no. Did you talk to her? A. Not at the present time, no. 6483

Q. You mean not at that moment? A. Not at that moment.

Q. Did you have a conversation with Mr. Larkin? A. Yes, I had a conversation with Mr. Larkin first.

Q. About Mrs. Libe? A. That is right.

Q. Then did you talk to Mrs. Libe? A. Yes.

Q. Will you tell us just what was said and where the talk was had? A. Mr. Larkin came into 203 and he said,

"This woman wants to see you about some job you know something about." I went over to the desk, which was nearest to the window, and I asked her just what was on her mind. And she said, "I came here to sign a contract," and she got no attention she claimed. She was sitting there for fifteen minutes.

Q. What did she say? Don't tell us what she claimed. A. Just as I explained. I said to her, "I am taking care of the job; you have your men on the job." She said, "Can't I have the same two men"—one was Edward Franz, and the other one I imagine was Stratton. She said, "I got to deliver my goods. I want a contract." I
6485 said, "O.K." I went over to the cabinet and I got two contracts from the cabinet, and I showed them to her. She said, "I just seen them,' but she wanted some concessions of hours and wages. I told her I was in no power whatsoever to do anything like that. I said, "We only have one uniform contract." And she read it over for approximately ten minutes or five minutes—five or ten minutes rather—and then she finally signed it. So she asked me, "Could I have the same two men I formerly employed?" And I said, "Yes, ma'am." And she got up shook hands with me, and left. She got up and left, and whether the fellow on the outside of the partition left with her I don't know.

Q. When you were in that room and Mrs. Libe was in that room, was Mr. Larkin there at any time? A. Mr.
6486 Larkin was busy at the books, yes, sir.

Q. Was he in the room? A. Yes.

Q. Did Mr. Larkin in your presence attempt to strike Mrs. Libe in the face with an envelope? A. No, sir.

Q. Did Mrs. Libe say to you that Mr. Larkin attempted to strike her in the face with an envelope? A. No, sir.

Q. Did you attempt to strike her in the face with an envelope? A. No, sir.

Q. Did Mrs. Libe say to you that she had been locked in the room for three hours and could not get out? A. No, sir.

Mr. Murray: Your witness.
The Court: Cross-examine.

Cross-examination by Mr. Cahill.

Q. Do you say that you are the business agent of Local 807? A. Yes, sir.

Q. When did you join Local 807? A. In 1935.

Q. And you ran for trustee and were elected on April 4, 1937? A. That is right. 6488

Q. Is that the same ticket on which Campbell and Furey ran? A. No, sir.

Q. Well, wasn't Furey elected a delegate on or about April, 1937? A. Furey ran with me. Not Campbell.

Q. But Furey did run with you? A. Yes.

Q. Did you say that Larkin said to you in regard to Mrs. Libe that "This is a job you know something about?" A. That is right.

Q. Had you any conversation about the Libe trucks with any member of the New York City Police Department? A. No, sir.

Q. You have never had any interviews with detectives of the New York City Police Department on that subject? A. No, sir. 6489

Q. Was that lock on the door, this Yale lock which has been described, connected in some way with a buzzer? A. No, sir.

Q. Or with a button? A. The buzzer was connected with a snap lock on a handle. Not on the Yale lock——

Q. Oh, there was another lock on the door which was on the handle, is that right? A. Yes.

Q. And you could open or release that lock by pressing a buzzer or button on the desk? A. Yes.

Q. And that second lock on the door, in order for you to get out, required that that buzzer be pressed; isn't that true? A. The second lock was never used.

Q. And it was operated from a buzzer, you say? A. Yes.

Q. And it could be released by pressing this buzzer? A. Yes.

Q. You say you were the shop steward of Consolidated since 1929? A. Yes.

Q. What were you doing in 1928? A. I was working in F. B. Carpenter's in the produce market.

Q. What were you doing there? A. Chauffeur.

Q. What were you doing in 1927? A. I was working
6491 for T. L. Gatewood in 1927.

Q. How long in 1927 did you work for Gatewood? A. I worked for him since 1926.

Q. Did you work right through 1927? A. Yes.

Q. Have you ever been convicted of a crime, Mr. Flaherty? A. Yes, sir.

Q. Of what crime? A. Petty larceny.

Q. In what year were you convicted? A. In 1927.

Q. What were you charged with the theft of? A. Cigarettes.

Q. Where from? A. Pennsylvania Railroad.

Mr. Cahill: That is all.

Mr. Murray: That is all.

(Witness excused.)

6492

MORRIS REICHLER, 18 Coster Place, Newark, New Jersey, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Reichler, how old are you? A. Twenty-five.

Q. Are you married? A. Yes, sir.

Q. Where do you live? A. Newark, New Jersey.

Q. How long have you lived there? A. I have lived in Newark about five years.

Q. Are you a member of Local 807? A. Yes, sir.

Q. How long have you been a member of that union? 6494
A. Since January, 1937.

Q. Before January, 1937, were you a member of any other union? A. I made an application at 445 but I never followed it up.

Q. 445 is where? A. In Yonkers. I was working there at the time.

Q. But you were not made a member of that union? A. No, not officially.

The Court: How long have you lived in Newark?

The Witness: About five years.

Q. Now, do you recollect an occasion on or about the 11th of April, 1938, when you were at Staten Island? 6495
A. Yes, sir.

Q. On that occasion did you see a man who described himself as Robert E. A. Boyle, who said at that time he was an agent of the Federal Bureau of Investigation? A. Yes, sir.

Q. Do you recollect what time of the day it was you were there? A. I think it was about 1.30 in the afternoon.

Q. Was your brother Samuel there at the same time? A. Well, Sam was there when I got there. I just came back from making a delivery for Miller's.

Q. At that time were you employed by anybody? A. I was employed by Miller Transport of Philadelphia.

Q. How long had you been employed by Miller Transport before April 11, 1938? A. Since about December of 1937—yes, about the last part of December, 1937.

Q. Now, when you got to Staten Island and saw Boyle, did you have a truck? A. Yes, sir.

Q. Whose truck? A. I had Miller's tractor and trailer.

Q. Were you driving it? A. Yes, sir.

Q. Was there anyone else on the truck besides yourself? A. No, sir. I just made a delivery to Tottenville, Staten Island; delivered about a half a load there.

6497 Q. What did you deliver to Tottenville? A. I don't know. Barrels of junk, I think it was, for a smoke plant in Tottenville.

Q. Then you went on? A. To Procter & Gamble to load the truck.

Q. Did you have a load to deliver at Procter & Gamble? A. No, sir. I had pickups to make at Procter & Gamble.

Q. Did you make the pickups there? A. Yes, sir.

Q. Did you make them before or after you saw this man Boyle? A. Just after I saw Boyle.

Q. Now, did you have a conversation with Boyle there? A. Boyle, as I pulled up with the truck——

Q. Did you, yes or no? A. Yes, sir.

Q. Now will you be good enough to tell the jury what Boyle said and did, if anything? A. As I pulled up with
6498 the truck I had to slow up in order to get into the gate, and as I was pulling in I heard him say to my brother, "Is that your brother?" And he said, "Yes." Boyle looked at me and said, "Get off that truck." So I stopped the truck right in the gate and I got out and said, "What is the trouble?" He said, "Let me see your union book." I said, "What do you want to see my union book for?" He said, "Well, I want to know what you are doing here." I said, "I can tell you what I am doing here. I am

working for Miller." He said, "Let me see your union book and your chauffeur's license." I showed him both and he said to me, "You know what you can do with this union book, don't you?" I said, "No. What are you talking about?" He said, "Well, you can take this and throw it right in the river. It won't be any good to you." I said, "Well, we will see about that. I don't know what you mean or what you are talking about." He said, "Well, are you stopping any trucks here?" I said, "Well, do you see me stopping any?" He said, "No." He said, "Well, don't stop any." I said, "I haven't stopped any." He said, "Well, go ahead. Go about your business," and he gave me back my union book and my license. That is the extent 6500
of the conversation I had with Boyle.

Q. Now, did you see a man there at that time who described himself as Paul M. Trapani, who said that he was a member of the F.B.I. in New York City as a special agent? A. The only one that I knew was Boyle. He showed me his badge and I took it for granted that the others were F.B.I. men, too.

The Court: Well, did you see Trapani on the witness stand?

The Witness: Yes, sir.

The Court: When you saw him on the witness stand did you then recognize him as the man who was there with Boyle?

The Witness: Yes, sir. 6501

Q. Now, did you have a conversation with Trapani at that time? A. No; he didn't have much to say.

The Court: We will take a recess now until 2.05.

(Recess to 2.05 P. M.)

6502 *Morris Reichler—For Defendants—Direct.*

AFTERNOON SESSION.

The Court: All right.

MORRIS REICHLER resumed the stand.

Mr. Murray: May I have the last question and answer?

(Last question and answer read.)

Direct examination (continued) by Mr. Murray.

Q. Well, did you have a conversation with Trapani in
6503 which you said to him in Staten Island that you were to help unload Miller's trucks and if he refused the trucks would not be permitted to unload? A. No, sir.

Q. Was there any discussion about Miller at all at that time? A. The only thing that was said, he asked me who I worked for and I told him I worked for Miller.

Q. Now, did you go to Allentown with your brother? A. Yes, sir.

Q. Did you see Mr. Hummel in Allentown? A. Yes, sir.

Q. Had you worked for Mr. Hummel? A. Never.

Q Did you have any particular reason in going to Allentown with your brother? A. The only reason I had was that I had a car and my brother did not, and I drove him up there.

Q. Did you have any interest in Hummel's trucking?
6504 A. No, sir.

Mr. Marks: I object to that.

The Court: Overruled. Yes or no.

The Witness: No, sir.

Q. Do you recollect that Mr. Hummel testified here that you and your brother went to his warehouse and that

you threw a contract or threw a piece of paper on the table and said, "Here is a contract for you to sign"? A. Yes, sir.

Q. Did that happen? A. No, sir. We walked into the office and the girl asked us who we wanted to see, and my brother said, "We want to see Mr. Hummel." And we walked into the other office; she escorted us in; and Mr. Hummel asked us who we were. My brother told him who he was and he said I was Morris, his brother. He asked us where the contract was, and my brother Sam handed him the contract, and he asked him if he could have a few days to look it over and he would let him know if he was going to sign it and he would send it back if he did. 6506

Q. Did you ever stop anyone's trucks? A. No, sir.

Q. Did you ever tell anyone that they would have to employ 807 drivers? A. No, sir.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. When did you go to work for the Miller Transport Company? A. About the 1st of January, 1938.

Q. Where were you working before then? A. Saul Trucking Company.

Q. Was your brother working there at that time? A. For a little while.

Q. Did you get your brother his job in the Saul Trucking 6507
Company? A. He got it the same way I got mine, through my cousin, who was a dispatcher there.

Q. How long did you work for the Saul Trucking Company? A. About two years.

Q. Where did you work before that? A. Worked with my father—for my father.

Q. How long? A: Oh, since I left school when I was about sixteen and a half.

Q. Did you drive for your father at all in the year 1937? A. In 1937? No. I worked for Saul in 1937.

Q. Is this Miller Transport a local trucker? A. No; he operates between New York, Philadelphia, Wilmington, Connecticut.

Q. And he is an over-the-road trucker? A. That is right.

Q. And on this occasion when you were on Staten Island where had you gotten on the Miller truck? A. At Procter & Gamble.

Q. And did you customarily meet the Miller truck at Procter & Gamble? A. All the time.

Q. Who was the No. 1 man in the Miller Transport job?

6509 A. Buster Moran.

Q. How long had he been the No. 1 man when you went to work for the Miller Transport? A. Well, I think he has been the No. 1 man for about fourteen years, as far as I know.

Q. How did you get your job with the Miller Transport? A. Through my cousin from Saul.

Q. Now, you became a member of Local 807 in January, 1937, is that right? A. That is right.

Q. You were driving for Saul then before you became a member of Local 807? A. No, I was a helper at Saul's before I became a member of Local 807.

Q. You were a helper before you became a member of Local 807? A. That is right.

Q. Is Saul a local or an over-the-road trucker? A. He

6510 is an over-the-road trucker.

Q. Where were you working for him? A. In the City of New York, and in Jersey, too.

Q. Were you ever a member of any Newark local? A. No, sir.

Q. Is there a local in Newark? A. Yes, sir.

Q. Did you ever register a complaint as to Mr. Boyle's conduct in the interview you had with him at Procter

& Gamble's? A. Register a complaint? No, I never registered a complaint; I had no reason to.

Q. I think he told you you could take your union book and throw it in the river? A. Well, I have heard that more than once.

Q. And you felt you had no reason to complain? A. No. There are a lot of people who think the unions are no good.

Mr. Cahill: That is all.
The Court: Anything else?
Mr. Murray: That is all. 6512

By the Court:

Q. When was it you made application to join the union in Yonkers? A. That was at the time I was working for Seaboard Freight Lines in Yonkers.

Q. What year? A. I think it was about 1935. And I made the application—I made an application——

Q. Never mind about that. I just wanted to know when it was. Where did you live then? A. I lived in Newark.

The Court: All right.
(Witness excused.)

6513

FRANK DOWNS, residing at 340 West 21st Street, New York City, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Downs, how old are you? A. Thirty-two.

Q. Are you married? A. Married, yes.

Q. Are you a member of Local 807? A. Yes, sir.

Q. How long have you been a member of that union? A. January 18, 1937.

Q. Before you joined the union what was your occupation? A. Longshoreman.

Q. Where did you work? A. United States Lines, Pier 61, North River.

Q. How long did you work there? A. Well, off and on about three years.

Q. Before that what did you do for a living? A. I drove a laundry truck.

Q. Now, where did you work in 1937? A. Well, I had
6515 no particular job; shaping different barns.

Q. Did you get work in 1937? A. I worked for R. A. Byrnes.

Q. When did you get work with R. A. Byrnes? A. Around June or July, 1937.

Q. And how long did you work for Byrnes? A. I am still working for him at the present day.

Q. How did you get your employment with Byrnes? A. Well, I used to shape up at 24th and Eleventh Avenue, different barns—Seaboard, different other barns. On that particular day there Mr. Byrnes was there. There was a tie-up, about seven trucks there, and I was dispatched on one of the trucks. Since then I have been there.

Q. Who dispatched you on the truck? A. Mr. Byrnes himself was there.

6516 Q. Did you stop any of the trucks? A. Never.

Q. Did you stop anyone's truck? A. Never.

Q. What kind of merchandise did you truck for Byrnes? A. Canned goods, drums of oil, fertilizing stuff.

Q. About how many hours a day on the average do you work or did you work up to June, 1938? A. I worked from eight to five, eight to six.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. Mr. Downs, are you acquainted with the co-defendant Robert Dillon? A. I heard of him.

Q. Are you acquainted with him is my question? A. I am not acquainted with him, no.

Q. Never met him before the trial started? A. I met him. I seen him at different places.

Q. Now, did you meet him is my question. A. I met him, yes.

Q. When for the first time did you meet Dillon? A. Well, on different deliveries I had I seen him on different trucks.

6518

Q. When for the first time did you meet Dillon? A. Around 1937.

Q. In the spring of 1937? A. I could say that, sir, yes.

Q. Now, what is the fact? A. My memory isn't so good on that point there.

Q. Just take your time and think. When for the first time did you meet your co-defendant Dillon? A. I couldn't say exactly.

Q. Well, was it in the cold weather or warm weather in 1937? A. It was around the warm weather.

Q. In the warm weather in 1937? A. Yes.

Q. Are you acquainted with your co-defendant Bernard Randazzo? A. We work together now.

Q. When for the first time did you meet Bernard Randazzo? A. Around 1937.

6519

Q. About the same time you met Dillon? A. I wouldn't say about the same time.

Q. Was it before or after you met Dillon? A. It might have been the same time. I am not sure.

Q. How about Max Katz? The defendant Max Katz? When for the first time did you meet Max Katz? A. I couldn't say.

Q. Well, what is your best recollection as to when you first met him? A. I couldn't say.

Q. Well, just think. Was it at the same time that you met Bernard Randazzo and Robert Dillon? A. It might have been, I don't know.

Q. Well, what is your best recollection? A. I haven't any recollection as to that. I couldn't say.

Q. Can't even recall the year you first met Katz? A. Well, it was shortly after I joined the union. I met a lot of them. Probably I met Katz around that time, too.

Q. You joined the union in January, 1937? A. Yes.

Q. Was it shortly after that that you met Max Katz?

6521 A. No, I wouldn't say shortly after. I wouldn't know. I met him within that year some time.

Q. You say you were a longshoreman for three years before you joined the union, is that right? A. Off and on, yes.

Q. What do you mean by "off and on"? A. Whenever I could get work down there.

Q. What were you doing when you weren't working as a longshoreman? A. I wasn't doing anything.

Q. How much of the three years did you actually put in working as a longshoreman? A. An average of two or three days a week.

Q. Were you a member of any union at that time? A. The Longshoremen's Local, I. L. A.

6522 Q. What local was it? A. I think it was 791. I am not sure now.

Q. What is your best recollection? A. About my working?

Q. No. As to the local of the longshoremen's union you belonged to? A. 791 or 991; something like that. I have no book with me now.

Q. Have you any recollection that would help you fix it between 791 and 991? A. It was either one of them two numbers. I can't think which now.

Q. Tell us where were the union headquarters. A. 22nd Street and Eleventh Avenue.

Q. On the corner? A. On the corner—not exactly on the corner. More or less nearer 22nd.

The Court: Well, were they in a building?

The Witness: In a building, yes.

Q. Who was the delegate? A. Gene Samson.

Q. How do you spell that? A. E-u-g-e-n-e S-a-m-s-o-n.

Q. What did you do before you became a longshoreman? A. I drove a laundry truck, I think it was.

Q. Well, aren't you sure whether you drove a laundry truck or not? A. I don't know the exact date. 6524

Q. No, but aren't you sure whether you drove a laundry truck or not? A. Yes, I am sure of that.

Q. When did you drive a laundry truck and for whom? A. Hughes Linen Supply. They were then located at 519 West 29th Street.

Q. How long did you drive for the Hughes Company? A. About a year, I imagine.

Q. That was the year of 1936, is that right? A. No.

Q. That was the year of 1933? A. Around 1933.

Q. Now, what did you do then before you drove for the Hughes Laundry? A. I worked in Wall Street.

Q. Where did you work in Wall Street? A. 74 Broadway.

Q. For whom? A. Patrick Francis Cusak, stockbroker. 6525

Q. That was in 1932, was it? A. No, that was 1929, I guess.

Q. 1929? A. Yes.

Q. How long did you stay with Mr. Cusak? A. I was there until after I got out of school.

Q. When did you begin with him? A. Around 1926 or 1927.

Q. And you stayed with him until 1929, is that right? A. Around that. I am not just sure of my dates.

Q. Now, what did you do between 1929 and 1933? A. I worked for Francis H. Leggett.

Q. For Leggett? For how long? A. 1929 until, I think, 1931.

Q. How late in 1931 did you work for Leggett? A. I don't know the exact date.

Q. Well, what is your best recollection? A. I couldn't say right now.

Q. Well, was it early or late in the year 1931 that you severed your connection with Leggett? A. I couldn't
6527 say. I am not sure. I wouldn't say.

Q. Well, what did you do in 1932? A. I just can't remember.

Q. Well, think for a moment. A. It is too far back. I can't remember that far.

Q. You have no recollection of what you did in the year 1932? A. No.

Q. Have you ever been convicted of a crime, Mr. Downs? A. Yes, sir.

Q. When were you convicted of a crime? A. Around 1936; something like that.

Q. What were you convicted of? A. Disorderly conduct.

Q. What was the offense? A. Fighting.

6528 Q. Where were you fighting? A. In the street.

Q. Whereabouts? A. 17th Street.

Q. What avenue? A. Eighth and Ninth.

Q. Now, tell us the names of all the over-the-road truckers you received money from during the period from December 1, 1936 to June 1, 1938. A. You mean the places I got paid from, working?

Q. Yes. A. What was the dates again?

Q. December 1, 1936 to June 1, 1938. I want the names of every over-the-road trucker. A. I only joined the union in 1937.

Q. Then take it from the date you joined, January, 1937 to June 1, 1938. Give us the name of every over-the-road trucker you received money from. A. I worked for H. Earl Pitzer, Salem Express, R. A. Byrnes, and I worked for a truckman—this F. B. I. man mentioned the name Kling, I think.

Q. Klink, K-l-i-n-k, wasn't it? A. Something like that.

Q. Go ahead. A. That is all I can remember. That is all, I think.

Q. Can you think of any others? A. That is all. 6530

Q. How about Fowser Fast Freight? A. Yes.

Q. Can you think of any others? A. No. That is all.

Q. How about Donald F. Hunter? A. I only worked for him when he was hired by Mr. Byrnes. It was an extra truck put in.

Q. Did you work on Mr. Hunter's truck? A. Through Mr. Byrnes. We got paid by Mr. Byrnes.

Q. You did work on his truck? A. Yes.

Q. How about the B-Mack Transportation Company? A. That is that Klink person.

Q. You worked for them? A. Yes.

Q. In the spring of 1937 did Dillon have an automobile? A. Not that I know of.

Q. You never saw Dillon in an automobile? A. Never. 6531

Q. Did you ever ride up and down the warehouse district on the west side in company with Dillon? A. No, sir.

Q. Did you ever do that in company with Katz? A. No, sir.

Q. Or Randazzo? A. No, sir.

Q. Now, did you have a conversation with an agent of the Federal Bureau of Investigation at the Savage Warehouse on the West Side? A. I did.

Q. Was that on an occasion when you were in company with a driver by the name of Wayne Klink of the Beemac Transportation Company of St. Louis, Missouri? A. I didn't know that driver at that time.

Q. Well, do you know now that the man was Wayne Klink of the Bee-Mac Transportation Company? A. Only from what I heard of the F. B. I. man there, Mr. Boyle.

Q. Did you have a conversation with the F. B. I. man as to what you were doing on Klink's truck? A. As I recall, I was in the truck——

Q. No.

6533 The Court: Did you have a conversation?

Q. Did you have a conversation with the F. B. I. man as to what you were doing on Klink's truck? A. Well, I was working——

The Court: No, no.

By the Court.

Q. Did you have a conversation with the F. B. I. man? A. Well, he did all the talking to me.

Q. Well, did you have a conversation with him? A. Yes.

Q. All right. Now, was that conversation with refer-
6534 ence to your being on Klink's truck? A. Yes, sir.

By Mr. Cahill.

Q. Did Klink telephone the office of the United States Attorney immediately prior to the agent of the Federal Bureau of Investigation having this conversation with you? A. Well, I would not know.

By the Court.

Q. Before you had this conversation with the F. B. I. man, did you see Klink? A. Yes, sir.

Q. Did he telephone to anybody? A. Not in my presence.

Q. Did you see him go to a telephone? A. No, sir.

Q. During the time that you saw him did an F. B. I. man come there? A. Yes, sir.

The Court: All right.

By Mr. Cahill.

6536

Q. Prior to the time the F. B. I. man came to the Savage Warehouse, had you had a conversation with driver Klink of the Bee-Mac Transportation Company? A. No, sir.

Q. Had none whatsoever? A. Had none whatsoever.

Q. Had anybody had any conversation with driver Klink in your presence prior to the F. B. I. agent coming on the scene? A. Not to my knowledge, no.

Q. Was this the first time you had ever met this driver Klink? A. Yes, sir.

Q. And were you on Klink's truck when the F. B. I. man appeared? A. I was in the truck, yes, sir.

Q. And yet you say you had no conversation with the driver of the truck? A. I had no conversation.

Q. What did you do, just get up and get on his truck? 6537
A. No; there was another fellow working the truck, and I happened to pass by——

Q. I beg your pardon? A. I say there was a fellow working the truck, and I lived in the neighborhood and I came by there and he asked me was I working, and I said no. And he says, "Do you want to finish out the truck?" I didn't know the fellow, and I figured a day's work is a day's work.

Q. Now, just a moment, if you please. Somebody whose name you don't know was there working on Klink's truck; is that right? A. That is right.

Q. And you had a conversation with this person you don't know? A. That is right.

Q. Was Klink there at the time? A. No, sir.

Q. And you got on and worked on Klink's truck without ever seeing Klink; is that your testimony? A. That is right.

Q. And when Klink came back did you have any conversation with Klink about what you were doing on Klink's truck? A. Well, Klink was asleep in the seat.

6539 Q. Well, when he awoke did you have any conversation with him as to what you were doing on his truck? A. Did I have any conversation with him?

Q. That is the question. A. No.

Q. You did not have any conversation with him, you say? A. No.

Q. Now, didn't you tell the F. B. I. agent on this occasion that you had been in the company of Robert Dillon? A. I did not.

Q. And of five men? A. No, sir.

Q. And that Dillon and the other men had left as soon as Klink had promised to pay you $9.42? Did you tell that to the F. B. I. agent? A. No, sir.

Q. How long have you known the co-defendant George Needelmann? A. Oh, a couple of years, I guess.

6540 Q. Well, did you meet him about the same time you met the others? A. No, sir. I met him in Mr. Byrnes' office when Mr. Byrnes moved his offices down to Hudson and Beach Street.

Q. Do you know the co-defendant George Needelmann? A. I know him, yes.

Q. How long have you known Needelmann? A. Oh, a couple of years I guess, since we moved down there.

Q. Now, did you tell Agent Boyle that you were engaged in stopping over-the-road trucks in accordance with instructions you had received from your 807 delegate? A. No, sir.

Q. Who was your 807 delegate? A. Willie Campbell and Austin Furey.

Q. Did you work on the trucks of William Harris during the period from January, 1937 to June 1, 1938? A. Well, he was in the same neighborhood. I used to work from one job to the other.

Q. Did you give us the name of Mr. Harris as one of the truckers you had worked for during the period from January, 1937 to June 1, 1938? A. I did. The Salem 6542
Express.

Q. The Salem Express? A. Yes.

Q. How did you get on Mr. Harris' trucks? A. I was hired by the shop steward.

Q. And who was that? A. William Farrell.

Q. Who had made the Salem Express job, do you know? A. I would not know.

Q. Well, do you know, is the question. A. I do not know.

Q. Did you make a trip to Swedesboro, New Jersey, during the period from January, 1937 to June 1, 1938? A. I made a trip in 1939.

Q. You made a trip down there in 1939? A. That is right.

Q. But not prior to June 1, 1938? A. That is right. 6543

Q. Were you accustomed to be at the corner of Laight Street and Varick Street in the mornings between January, 1937 and June 1, 1938? A. No, sir; Beach and Hudson.

Q. Beach and Hudson Streets? A. Yes.

Q. In whose company used you be at the corner of Beach and Hudson? A. Well, there was a bunch of road drivers used to eat in the restaurant and the trucks used to pull up there.

6544 *Frank Downs—For Defendants—Cross.*

Q. Now, tell us the 807 men, if you will, in whose company you used to be at that location during that time. A. Well, there was Randazzo and I.

Q. Who else? A. And Needelmann.

Q. Who else? A. That is all I can think of right now.

Q. How about Dillon? A. No.

Q. Never saw Dillon there at the corner of Beach and Hudson during that time? A. No, sir.

Q. How about Katz? A. No, sir.

Q. Never saw him there? A. No.

Q. Where used you see Dillon and Katz? A. I only seen Dillon a few times.

6545 Q. Well, in what particular case did you used to see Dillon? A. Well, at the time I went to work for Byrnes at 24th Street.

Q. You used to see him up there? A. Well, he was on the job in the beginning there.

Q. How about Venditti? Used you see Venditti down there at Beach and Hudson Streets? A. He worked for Salem Express.

Q. Well, used you see him there at Beach and Hudson Streets in the morning? A. Yes.

Q. How about Red Klein? Used you see Red Klein down there in the morning? A. No, sir.

Q. How long do you know Red Klein? A. I know him about a year or so, I guess.

6546 Q. When for the first time did you meet Red Klein? A. I could not say.

Q. Have you no recollection? A. No recollection.

Q. Can't recall the occasion nor the time? A. No, sir.

Q. Are you absolutely clear that it was 1939 that you went to Swedesboro and not 1937? A. 1939.

Q. Was it in 1939 that you went to Swedesboro with Dillon? A. I never went with Dillon.

Q. You never want to Swedesboro with Dillon? With whom did you go to Swedesboro? A. There was a fellow by the name of Freglotti.

Q. How do you spell that name? A. You got me there.

Q. Is he an 807 man? A. Yes, sir.

Q. Who else was along? A. Just he and I.

Q. On whom did you call in Swedesboro? A. We went down at the request of Mr. Byrnes.

Q. And did you call on Mr. Byrnes down there? A. Yes.

Q. Is that the only trip you made to Swedesboro? A. That is the only trip I know of.

Q. Well, is there any doubt in your mind as to whether that was the only trip you made to Swedesboro? A. No doubt.

Q. Is that the fact?

6548

By the Court.

Q. Is that the first time you had ever been to Swedesboro when you went down there in 1939? A. 1939, yes, sir.

By Mr. Cahill.

Q. You are positive of that? A. I am pretty positive.

Q. Well, are you positive or not? A. Yes.

Q. Is that the fact? You are positive that you only made one trip down there? A. Yes.

Mr. Cahill: That is all.

The Court: Next witness.

(Witness excused.)

6549

6550 *Anthony Venditti—For Defendants—Direct.*

ANTHONY VENDITTI, residing at 2037 West 8th Street, Borough of Brooklyn, City of New York, called as a witness on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Venditti, are you a member of Local 807? A. I am.

Q. And how long have you been a member of that union? A. Since May, 1937.

Q. Before May, 1937, what kind of employment did you have? A. I was a chauffeur for Needelmann Auto Trucking.

6551

Q. And where was their place of business? A. 27th Street and Tenth Avenue.

Q. Was that a local trucker? A. Yes, sir.

Q. Did they do any over-the-road work? A. No, sir.

Q. When did you go to work for Needelmann? A. In February, 1937.

Q. And before you worked for Needelmann where did you work? A. Well, I was on W.P.A.

Q. And how long were you on W.P.A.? A. Since 1935.

Q. I see. What kind of work did you do on W.P.A.? A. Laborer.

Q. Whereabouts? A. Brooklyn.

Q. Well, on the streets or in a park? A. Nursery, in the park.

6552

Q. Nursery? A. Yes.

Q. Now, Mr. Venditti, do you know Mr. Strozyk, the trucker of Swedesboro, New Jersey? A. I don't know him personally.

Q. Did you ever work for Strózyk? A. I did.

Q. Did you know a driver named Benjamin Mattson of Swedesboro, New Jersey? A. I do.

Q. Did you ever work on his truck? A. I did.

Q. How often? A. Several times.

Q. Well, about how many, if you know? A. Oh, about two or three times.

Q. Do you remember when you first went to work on his truck? A. I do.

Q. When was it? A. I think it was in October.

Q. Of what year? A. No, not October; in August, 1937.

Q. How did you get that employment? A. I was hired as an extra man.

Q. Did you stop Strozyk's truck? A. No, sir.

Q. Did you have any conversation with his driver before you got the employment? A. No, sir.

6554

By the Court.

Q. Who hired you? A. Manuel Magan.

By Mr. Murray.

Q. And what was Magan's job, if you know, with Strozyk's trucks? A. He was taking care of the job. I think he was the No. 1 man at the time that I was there.

Q. What kind of work did you do for Strozyk? A. I drove his truck and unloaded.

Q. What time did you generally go to work in the morning? A. About 7.30.

Q. And how long would you work? A. Until about five, six at night.

6555

Q. Did you ever meet H. Earl Pitzer of Biglerville, Pennsylvania? A. I did.

Q. Where did you meet him first? A. At 100 Hudson Street.

Q. Do you remember when it was? A. I think it was the latter part of October, 1937.

Q. Did you ever meet one of his drivers named Paul Ellsworth Koontz? A. Not at that time.

Q. Did you ever meet him? A. Oh, yes, sure.

Q. Do you recollect when you first met him? A. I think I first met him in November.

Q. Of what year? A. 1937.

Q. Did you ever stop his truck? A. No, sir.

Q. How did you get the employment on his truck? A. I was hired by Pitzer.

Q. Pitzer himself? A. That is right.

Q. Now, before you were hired by Pitzer, where did you first meet Pitzer? A. 100 Hudson Street.

Q. And what kind of a place is that? A. That is the broker for the cannery he rides for.

6557 Q. What? A. Broker. That is an office building outside there.

Q. You say you met him in a broker's office? A. That is right.

Q. Do you know the name of the broker? A. William R. Hauck.

Q. How did you come to go to the broker's office? A. Well, I did not go at the time he hired me. I was out on the street when he hired me.

Q. Yes? A. Later in the day I went to the broker's office by appointment with Pitzer.

Q. Who suggested, if anyone, that you should go to the broker's office? A. Mr. Pitzer.

Q. Was there any conversation in the broker's office? A. Yes, sir.

6558 Q. What was it? A. He says he has been hiring 807 men straight along, and he can't understand why he must sign a contract.

Mr. Cahill: May we have that read, please?

The Court: Yes.

(Answer read.)

Q. Well, who was present when Mr. Pitzer said that? A. Georgie Needelmann, myself and Mr. Pitzer.

Q. In the office? A. No; out on the street. This is in the morning I am talking about.

Q. What was said in the afternoon, if anything? A. Oh, he wanted us to work his trucks without signing a contract.

Q. Yes? What did you say, if anything? A. I said, "The union won't allow us to be a convenience to an over-the-road man." Either he signs a contract or we don't work his trucks at all.

Q. Did you at any time go to Biglerville, Pennsylvania? A. Yes.

Q. Can you fix the time? A. About November, 1937.

Q. And did anyone accompany you there? A. Yes, sir.

Q. Whom did you see in Biglerville? A. Mr. Pitzer. 6560

Q. How did you come to go there? A. Well, the day before a road driver came up and asked us if we would go down to Pitzer's home that night. So we says, "We can go down there; it is too far away; we haven't got the means of going down there." He says, "Well, I am instructed to drive you down and he will take care of you when you get down there."

Q. Do you know the name of that driver? A. Paul Koontz.

Q. How did you get to Biglerville? A. We rode down with the truck.

Q. How long did it take to get there? A. About nine hours.

Q. Do you happen to know how far it is from Biglerville, Pennsylvania, to New York City? A. About 200 miles. 6561

Q. What time did you get to Biglerville? A. I think it was about 10 o'clock that night.

Q. And did you see anyone there when you got there? A. I seen Mr. Pitzer and a few of his drivers down in the shack there.

Q. Did you have any talk with Mr. Pitzer? A. Well, he shook our hands when we got down there——

The Court: No; you were not asked that. You were asked if you had any talk with him?

The Witness: Yes, sir.

Q. Tell us what was said. A. He said, "Well, boys, how did you like the ride?" So I says, "It is tough." So he says, "Well, it is kind of late now; there is no sense of us talking about the contract; you might as well go to sleep and have something to eat." So he put us up in the hotel and he fed us and then we went to bed.

Q. Did you see him the next day? A. We seen him the following morning.

6563 Q. Where did you see him? A. At the hotel.

Q. Was there anyone with Mr. Pitzer at that time? A. No, he was alone.

Q. Was there a talk between you or Mr. Needelmann and Mr. Pitzer? A. Yes.

Q. Do you remember what the talk was? A. Well, it was in reference to the contract.

Q. Well, tell us as far as you remember what was said. A. He said, "Well boys, before we talk about the contract let us take a look around the town here; I will show you around." So he brought us down to the cannery there and showed us how the tomato soup was canned——

Mr. Cahill: May we have that stricken out, your Honor, in the conversation given?

6564 The Court: Yes, strike it out.

Q. Well, when you got to the tomato factory, did he say anything? A. Yes. He said, "How would you like to take a couple of cases of tomato juice home?" So I said, "Do I have to pay for it?" He said, "No, go ahead, it is on the cuff."

Q. Well, did you take a case home? A. Yes.

Q. Did he give you the case? A. He did.

Q. Now, when you talked in the hotel with Mr. Pitzer, was Mr. Needelmnan present? A. He was.

Q. Do you recollect that on April 19th Mr. Pitzer testified that in a talk with you and Mr. Needelmann in Biglerville, that Mr. Pitzer said to you or both of you that he knew of no law or reason why he could not haul merchandise into New York City without being bothered? A. Without what?

Q. Without being bothered. A. I don't remember that conversation.

Q. And do you recollect that Mr. Pitzer testified that Needelmann told him he did not care about the laws; that was the rule he had to go by? A. No, sir. 6566

Q. Did any such conversation take place in your presence? A. No, sir.

Q. Do you recollect whether or not in your visit to Biglerville Mr. Pitzer did sign a contract? A. He did.

Q. Do you recollect that Mr. Pitzer testified here on April 19th that he said on signing the contract, to Needlemann, that he was signing the contract against his will and judgment? A. He did not.

Q. But that it was the only way out? A. No, sir.

Q. While you were at Biglerville were you in Mr. Pitzer's home? A. I was.

Q. Do you remember who was present at the time? A. Georgie Needelmann, Mr. Pitzer, his wife, two children and myself.

Q. Was there any profane language used by either you or Needelmann? A. No, sir. 6567

Q. In Pitzer's home? A. No, sir.

Q. Do you recollect an incident in October of 1938 in which you met Mr. Pitzer at the Times Square Hotel in New York? A. I do.

Q. Can you fix that date? A. About September, 1938.

Q. How came it that you met Mr. Pitzer in the Times Square Hotel? A. Well, it was the time when he asked

me to sign a new contract or renew the new contract, and he wanted to see us about that contract. So he made an appointment for Georgie Needelmann and myself to meet him up there through a truckman by the name of F. W. Lang.

Q. Did you have a conversation in the hotel with him? A. Yes, sir.

Q. What was it? A. He said, "Well, boys, we are back here again on a new contract. What are we going to do about it this time?" I said, "There is nothing to do about it, but sign it." He said, "Well, suppose we forget about it. Is it worth about $500?" Georgie looked at me and I
6569 looked at him. We says, "No," we say. We said, "$500? We are not talking here as a particular association." We said, "We are here to work for a day's pay, for a day's wages." He says, "I don't mean it that way. I will give you the $500, and you can just turn around when you see one of my trucks; if they are stopped in any union house they will call you up and you will cover them. That is all you have to do. So Georgie said, "No. I am working now." And I says, "I am working, too. So if you sign the contract you sign it with an unemployed member of the union."

Q. Now, did you ever stop a truck? A. No.

Q. Did you ever stop any over-the-road owner's truck? A. Not to my recollection.

6570 Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. There is no doubt about it in your mind? You never did stop an over-the-road truck? Did you, Mr. Venditti? A. Stop it? No, I never stopped it.

Q. Never stopped one at any time? A. Not that I can recollect.

Q. There is no doubt about it, is there? A. No doubt about it.

Q. Well, when you told Mr. Murray that you couldn't recall whether you had or not, you really meant you never did; isn't that true? A. That is right.

Q. You say you worked in a nursery for the WPA from 1935 to 1937. When did you give up the WPA in 1937? A. February.

Q. Now, when did you go to work for Needelmann? A. The latter part of February.

Q. And how long did you work for Needelmann? A. To July.

Q. July when? A. Oh, I don't know when. 6572

Q. Well, what year? A. 1937.

Q. What did you do before you got on the WPA? A. I worked for Anconia from 1929 to 1935.

Q. Where are they located? A. 259 West 10th Street.

Q. Are they over-the-road truckers or local truckers? A. Local truckers.

Q. What was your first over-the-road trucking job? A. Strozyk.

Q. What kind of truck did you drive for Anconia? A. Five-ton White, Autocar.

Q. That is the biggest truck you have ever driven? A. International. No. I drove bigger than that.

Q. For Anconia? A. No, not for Anconia.

Q. Prior to July, 1937, what was the biggest truck you ever drove? A. A seven-ton Bulldog Mack. 6573

Q. Did you ever drive a tractor before July, 1937? A. No, never before.

Q. Whom was the first person you worked for after you left Needelmann in July, 1937? A. E & S.

Q. E & S? A. Transportation.

Q. Where are they located? A. Swedesboro, New Jersey.

Q. Whose company is E & S? A. Strozyk.

Q. Mr. Strozyk's? When did you go to work for Mr. Strozyk? A. I think it was in October—August—between August and September.

Q. All right. For whom else did you work prior to June 1, 1938? A. I worked for Mid-West Forwarding.

Q. Where are they located? A. They were located on Franklin Street between Hudson and Varick.

Q. Whose company is that? A. What do you mean, "whose company"?

Q. Who is the owner of it? A. Oh, I don't know the owner.

Q. Are they a local or interstate trucker? A. Inter-
6575 state.

Q. Where do they come from? A. Chicago.

Q. How long did you work for the Mid-West prior to June 1? A. On and off. I was an extra man.

Q. For whom else did you work prior to June 1, 1938? A. R. A. Byrnes.

Q. For whom else? A. Salem Express.

Q. Whom else? A. Pitzer.

Q. Whom else? A. That is all I can think of now.

Q. I show you Government's Exhibit 36 for Identification and ask you if you can tell us whose handwriting appears in the last line of that exhibit for identification. A. That is mine.

Q. Will you tell us who wrote in the two lines above it?
A. I wrote everything that is here in pencil but I never
6576 wrote what is there in ink.

Q. Was the matter written there in ink on this paper when you wrote what appears in pencil? A. No, sir. Milton Lahn——

Q. Whose handwriting is in ink? A. I don't know.

Q. You do not know? A. No.

Q. For whom was Lahn a driver? A. What was that again?

Q. (Read.) A. Lahn was a truck owner.

Q. That is not one of the names you gave us, is it, as somebody that you worked for? A. Milton Lahn? No. I only worked for him one day.

Q. Is there anybody else you worked for during this period? A. I think I worked for the National Fruit Products.

Q. Whom else? That is an over-the-road trucker, isn't it? A. Yes.

Q. Go ahead. A. That is all I can remember now.

Q. How about the Reed Trucking Company of Milton, Delaware? A. I did.

Q. Beg pardon? A. I did. 6578

Q. Can you think of any others now? A. No.

Q. You can't think of any others? A. No

Mr. Cahill: Let me have this marked, if I may, for identification.

(Marked Government's Exhibit 78 for Identification.).

Q. I show you 78 for Identification and ask you if you can tell us whose handwriting appears on the last line there. A. It is kind of shaky. I don't know if it is mine or not.

Q. Well, is it yours or not? A. It may be.

Q. Now, we don't want "maybes"; is it yours or not? A. It looks like mine. 6579

Q. Who wrote the rest of what appears on Exhibit 78 for Identification? A. I did.

Mr. Cahill: Well, I will offer this, if I may, at this time

The Court: Show it to counsel.

(Mr. Cahill hands exhibit to defense counsel.)

The Court: Is there objection?

Mr. Murray: I have no objection, if your Honor please.

The Court: Received.

(Government's Exhibit 78 for Identification received in evidence.)

Mr. Cahill: 78, ladies and gentlemen, reads: "Received from Rosser," the next word looks like "union, Md., $9.42 for union driver. T. Venditti."

Q. What other over-the-road truckers prior to June 1, 1938, did you work for? A. Well, I can't remember them all. I was only an extra man shaping up from barns.

6581 Q. Can you give us the names of some other over-the-road truckers? A. I can't remember.

The Court: Does Exhibit 78 refresh your recollection?

The Witness: It does.

The Court: And did you work for the concern referred to in that exhibit?

The Witness: I did, yes.

By the Court.

Q. And that name is what? A. Rosser.

Q. How do you spell it? A. R-o-s-s-e-r.

6582 *By Mr. Cahill.*

Q. You say you were an extra shaper at barns. Truckers like Rosser from Maryland had no barns here in New York, did they? A. No.

Q. Where did you pick up truckers like Rosser who had no barns here in New York? A. I remember down in Seeman Bros.

Q. Where did you pick him up? A. I didn't pick him up; he picked me up.

Q. Where did you get in contact with a man like Rosser who had no barn in New York? A. I didn't get in contact with him.

Q. Where did you get in touch with men like Rosser?

The Court: Who hired you? That is the question.

The Witness: The driver on the Rosser truck himself.

Q. Where did he get hold of you? A. Down by Seeman Bros.

Q. Was this the only occasion where a driver hired you at a warehouse? A. No, sir. 6584

Q. How many occasions were you paid where you met people who paid you at places other than terminals or barns in New York City prior to June 1, 1938? A. I don't get you.

The Court: Well, is this the only employment you ever had where you were hired by the driver of an over-the-road truck?

The Witness: No. Several times.

The Court: How many times were you hired?

The Witness: It may be different times.

By the Court.

Q. How many times? A. Oh, about seven or eight times.

Q. Seven or eight times when you were hired by the 6585 driver of an over-the-road, out of town truck? A. That is right.

By Mr. Cahill.

Q. Where the particular over-the-road didn't have a barn or terminal in New York City, isn't that true? A. That is true.

6586 *Anthony Venditti—For Defendants—Cross.*

Q. Now, did you tell these drivers in these instances that they had to have a New York City man on the truck? A. No, sir.

Q. Never told them that? A. Never did.

Q. Did they ask you in each case please to help them? A. They never did.

Q. Did you collect $9.42 in each instance? A. Every time I worked.

Q. Now, what other warehouses did you frequent during this period? A. I didn't frequent no warehouse.

Q. How about Jaburg Bros.? Isn't that a warehouse here in New York City? A. It is.

6587 Q. Did you ever meet over-the-road drivers who didn't have barns or terminals here at Jaburg Bros.' warehouse? A. I might have passed there in the morning on my way to work.

Q. Answer the question. Did you ever meet over-the-road truck drivers there who didn't have barns or terminals——

The Court: Were you ever hired there?

The Witness: I was hired at Jaburg's, yes.

By the Court.

Q. Warehouse? A. But I never met any truck drivers.

Q. But you were hired there? A. Yes.

6588 Mr. Cahill: I ask that this be marked for identification.

(Marked Government's Exhibit 79 for Identification.)

By Mr. Cahill.

Q. Now will you look at 79 for Identification and tell us, if you will, in whose handwriting the first line of that paper is. A. That is mine.

Q. And whose handwriting is the rest of the paper in? A. I don't know whose it is—it is all mine but the last line.

Mr. Cahill: I offer 79 with the exception of the last line (handing to counsel).

Mr. Murray: I object, if your Honor please.

The Court: Let me see it.

(Paper handed to the Court.)

The Court: Sustained.

Q. Well, does 79 for Identification refresh your recollection as to any happening prior to June 1, 1938? A. No, sir.

6590

Q. Now, any other warehouse where you met over-the-road truckers who didn't have terminals in New York up to June 1, 1938? A. I might have been hired. I never met no over-the-road truckers there.

Q. Well, any other warehouses that you did anything in regard to over-the-road trucks where the truckers didn't have terminals in New York City? A. I remember Francis H. Leggett's one day. I was hired there.

Q. What was the company involved there? A. National Food Products.

Q. Any other warehouse you can think of? A. That is all.

Q. How about Seeman Bros.? A. I said that.

Q. You did say that. I beg your pardon. How about the Fowser Fast Freight? Did you work for them? A. No, I never did; not in June, 1938.

6591

Q. I am not asking you as to June, 1938; I am asking you for the period of time since you joined the union, which was in May, 1937. A. I may have worked for them.

Q. To June 1, 1938; did you work for the Fowser Fast Freight within that period? A. When?

Q. From the date you joined the union, which was in May, 1937, up to June 1, 1938. A. Yes.

Q. Did you work for the Fowser Fast Freight? A. No, sir.

Q. Never did? A. No.

Q. When for the first time did you meet Willie Campbell? A. 1939.

Q. When for the first time did you meet Austy Furey? A. I never met Austy Furey.

Q. Who proposed you for membership in Local 807? A. No one.

Q. Nobody? A. No.

Mr. Cahill: That is all.

6593 *Redirect examination by Mr. Murray.*

Q. Mr. Venditti, when you joined Local 807, will you tell us just the manner by which you made your application to become a member of Local 807? A. Well, we were working for a non-union trucker at the time. There was about nine of us working for him.

Q. No. How did you get into the union? What did you do to join the union? A. I went up to the office and signed up.

Q. By "signing up," what do you mean? A. I just went up and asked for a book.

Q. Do you mean an application? A. That is right.

Q. Did you fill it out? A. Yes, sir.

6594 Q. Was it necessary to have anyone to propose you? A. No, sir.

Mr. Murray: That is all.

Recross-examination by Mr. Cahill.

Q. Now, in order to get into this union, you signed what was called an application blank, didn't you? A. I did.

Q. There was a line on that marked "sponsor," wasn't there? Do you recall that? A. I don't recall it.

Q. You have no recollection that there was a line on that application blank marked "sponsor"? A. No.

Mr. Cahill: May we step up, Judge, for a second?

The Court: Yes. I will take a recess and you can step inside.

(Short recess.)

Mr. Cahill: If the Court please, I ask permission to suspend the further cross-examination of this witness until Monday. 6596

The Court: Granted.

Mr. Murray: John Weinheimer.

JOHN JOSEPH WEINHEIMER, residing at 56 East 190th Street, Borough of the Bronx, City of New York, called as a witness in behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Weinheimer, are you a member of Local 807? A. Yes, sir.

Q. And how long have you been a member of that local? 6597
A. I transferred into 807 some time in 1936.

Q. Please keep your hand away from your mouth. A. All right.

Q. And before that had you been a member of any other union? A. Yes, sir.

Q. Which union? A. I was a member of 282.

Q. And how long had you been a member of 282? A. About two years.

6598 *John Joseph Weinheimer—For Defendants—Direct.*

By the Court.

Q. Where is 282 located? A. At 14th Street, right off Eighth Avenue.

By Mr. Murray.

Q. When you first became a member of 807 what was your occupation? A. Truck driver.

Q. And whom did you drive a truck for? A. I worked for the New York and Pennsylvania Motor Express.

Q. And where was their place of business located? A. On Greenwich Street.

6599 Q. Do you remember when you went to work for that concern? A. I think it was in 1932.

Q. Was that an over-the-road trucker or local trucker? A. It was an over-the-road trucker.

Q. And how long did you continue to work for that concern? A. Oh, approximately three years.

Q. After you left their employment did you get employment with anybody else? A. Yes, sir.

Q. With whom? A. I worked for the Genser Trucking.

Q. And where was their place of business? A. Jay Street, Brooklyn—I mean Gold Street, Brooklyn.

Q. How long did you work for that concern? A. About a year.

Q. Now, in 1937, did you have any employment? A. No,

6600 sir; I was shaping different jobs; wherever I could get a day's work I worked.

Q. Did you ever work for Mr. Goddard of the Brookline Express? A. No, sir, I did not.

Q. Did you get work in January of 1937? A. Yes, sir.

Q. With whom did you get work? A. William Young Transportation.

Q. Where was their place of business? A. 438 West 19th Street.

Q. And how long did you work for them? A. I am at the present time still working for them.

Q. Is there any place else that you worked in 1937 besides the William Young concern? A. No, sir.

Q. What kind of work do you do for William Young? A. Well, I drive a trailer, a tractor-trailer.

Q. What kind of merchandise did they truck? A. Batteries, steel, bales of chocolate; and miscellaneous freight.

Q. Where do their loads come from? A. Niagara Falls, Buffalo.

Q. And where are they delivered in New York? A. All over New York City, Brooklyn, Long Island, Jersey.

Q. Do you drive the truck yourself? A. Yes, sir. 6602

Q. Do you unload the truck? A. Yes, sir.

Q. And how long have you been doing that? A. Since 1937.

Q. How many hours a day on an average do you work? A. Eight.

Q. Did you ever meet Mr. Goddard? A. I did.

Q. Do you recollect Mr. Goddard testifying to an incident here where he said that you struck him? A. I do.

Q. Would you remember when that was?

The Court: You mean when he struck him or when he testified?

Mr. Murray: When he testified that the incident occurred.

6603

A. I don't recall the dates that he gave.

Q. Well, did you meet Mr. Goddard any time in 1937 or early in 1938? A. I did.

Q. Do you remember whether it was 1937 or early in 1938 that you met him? A. I think it was early in 1938.

Q. Do you remember any particular occasion when you met him? A. I do. The first time I met him was in a diner on Tenth Avenue.

Q. Do you know when that was? A. I just can't give the dates.

Q. Well, do you know what year it was? A. Some time in 1938.

Q. Do you know whether or not it was before or after June of 1938? A. I think it was before June.

Q. Well now, did you have any talk with him then? A. Yes.

Q. What talk did you have with him? A. Well, he asked me—he said that he wanted to get somebody with a local truck, and he says, "I understand that over in the garage where you are at there is a number of men that have
6605 their own trucks, and that they rent them out." And I said, "That is true; there is a number of men over there." So he asked me to send one over to him; and I did.

Q. Did that terminate that conversation? A. Yes, sir.

Q. Did you meet Mr. Young again after that incident?

Mr. Cahill: Goddard.

The Court: Not Mr. Young.

Q. Mr. Goddard, rather. A. I did.

Q. Do you remember when it was? A. It was about a week or two after that he met me on the corner of 19th Street and Tenth Avenue, and he says, "I owe you a drink." And we went into the corner saloon and had a few drinks together.

6606 Q. Well, did you meet him again outside of that incident? A. I did. I used to meet him every morning in the diner and have breakfast with him.

Q. Now, Mr. Goddard testified here that there was an incident when you struck him. A. That is true.

Q. Was there an incident when there was any controversy between you and Goddard? A. No, sir.

Q. Did you ever strike him? A. I struck him in the 20th Street gas station. He called me a son-of-a-bitch.

Q. When was that?

Mr. Ennis: I move to strike out the answer as not responsive.

The Court: I will allow it to stand.

A. I don't recall just what month it was.

Q. Do you remember what year? A. It was some time in 1938.

Q. Will you tell the jury what led up to the incident? A. Well, I had loaned him my car a couple of times, around four times in all, and I had just pulled into the station and I put some gas in the car, and I got out of the car, and Mr. Goddard said, "These 807 bastards." So I walked over to him and I told him I resented—that I am an 807 member and I resented being called a bastard. So he turns around and said, "Well, you son-of-a-bitch, this goes for you too." And he kicked me, and when he did I hit him; and two weeks later he had me arrested. We went before Magistrate Brodsky and he threw it out—he dismissed it. 6608

Q. Well, did you meet Goddard after that? A. I did. I met him outside of the court room here the day he testified.

Q. Did you have a talk with him? A. I did.

Q. What was the talk? A. He asked me how I was getting along, and he told me I was looking good, and said he was sorry we had any trouble, and he said that Mr. Lovell still owes him sixteen weeks' pay; and he says for all the trouble he had it wasn't worth it. 6609

Q. Now, did you ever work for Lovell? A. I did not.

Q. Or Goddard? A. No, sir.

Q. Did you ever have anything to do with their trucking operations? A. No, sir.

Q. At any time? A. No, sir.

Mr. Murray: Your witness.

6610 *John Joseph Weinheimer—For Defendants—Cross.*

Cross-examination by Mr. Cahill.

Q. This Young Transportation Company you worked for—where was their place of business in relation to the place of business of the Brookline Trucking Company? A. It was right off the corner.

Q. Beg pardon? A. It is right off the corner.

Q. Just across the street? A. That is right. Brookline was at 157 Tenth Avenue, and the William Young Transportation is in the garage on 19th Street. 157 Tenth Avenue is right on the corner of 19th.

Q. Did you know a negro member of 807 named Charles Arthur Brown? A. I do, or rather I did.

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Q. And do you recall an occasion when Charles Arthur Brown was working across the street from the Young Transportation Company at the Brookline Company's place of business? A. No, sir, I didn't know him from there.

Q. Well, do you recall a certain occasion when Brown was beaten up on the premises of the Brookline Transporation Company? A. No, sir, I was not there.

Q. This Young Transportation Company—who was the No. 1 man there in 1937? A. I was.

Q. Who was the No. 1 man there from the very beginning so far as 807 was concerned? A. I was the first man hired there.

Q. You stopped that job, did you not? A. No, sir.

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Q. Where does the Young Transportation Company have its point of origin? A. Niagara Falls, New York.

Q. And you were the first 807 man to have anything to do with that company, weren't you? A. I was not the first 807 man that he hired.

Q. Who was the first 807 man that he hired? A. I don't know right offhand now.

Q. Well, think for a minute and give us the name. A. I don't even know whether it was an 807 man. I know he had——

Q. That is what I am asking you about. Who was the first 807 man? A. I was the first 807 man.

Q. And is it a fact that you stopped the trucks of the William Young Transportation Company in the year 1937 when they came into New York City? A. No, sir.

Q. Who was present when the contract was negotiated between 807 and the William Young Transportation Company, if you know? A. Who was present?

Q. Yes. A. Well, there was no one present. I think, if I am not mistaken, it was sent through the mail. I had been working on the job for about four months when he did sign a contract. 6614

Q. Who represented 807 at that time in connection with the contract? A. Well, on my particular job Mr. Hickey was on it.

Q. Wasn't it Campbell who signed that contract on behalf of 807? A. I don't know if he did sign the contract, but I mean when he sent the representative down there, Mr. Hickey was the one who was on the job.

Q. Now, in 1937 was the Young Transportation Company the only over-the road company you worked for? A. That is right.

Q. When did you start to work for the Young Transportation Company? A. I think it was around the 25th of January. 6615.

Q. And when did you go to work for the Genser Trucking Company? A. I think it was around the latter part of 1935 or the early part of 1936; but I didn't work steady.

Q. All right. When did you go to work for the New York & Pennsylvania Express? A. I think it was around 1932.

Q. Where did you work before you worked for the New York & Pennsylvania Express? A. I worked for the Penn Dispatch.

Q. Are they a local trucker? A. No, it is a road trucker.

Q. When did you work for them? A. I think it was in 1931.

Q. You said on direct examination, if I heard you correctly, that you joined Local 807 in 1936. Is that right? A. I transferred into Local 807 in 1936.

Q. Isn't it a fact that you did not join Local 807 until February, 1937? A. No, sir.

Q. Will you look at your book, please, and tell us what the fact is? A. (Referring to book) It is marked the twelfth day, the tenth month, 1936.

6617 Q. 1936? A. Yes.

Q. December 12, 1936? A. That is right.

Q. Now, at the gas station on 20th Street where you say you struck Goddard, were you alone at that time? A. Yes, sir.

Q. Your brother was not with you? A. No, he was—I pulled into the gas station. My brother had been there, yes.

Q. Was your brother there or not? A. My brother was there, that is right.

Q. And was your brother waiting for you at the gas station when you pulled in? A. No.

Q. Was he in the car with you? A. No, he was not.

Q. Was he just standing at the gas station? A. That is right.

6618 Q. Was Goddard alone or was Goddard in the company of an attorney named Harris? A. I don't know who the man was but there was somebody else there.

Q. A man that was an attorney named Klein? A. I don't know whether his name was Klein or not.

Q. But there was another man with Goddard? A. That is right.

Q. Were you in your own car when you drove into the gas station? A. That is right.

Q. Where were you coming from? A. Coming from my job.

Q. What time of day was this? A. Oh, I think it was around dinner time, if I am not mistaken.

Q. Now, you said on direct examination that you never worked for Goddard? A. I did not.

Q. Did your brother work for Goddard? A. That is right, my brother did.

Q. That is, your brother Ed? A. That is right.

Q. Now, when did your brother Ed go to work for Goddard? A. I could not say.

Q. Well, what is your best recollection? A. I could not say just when he went to work for them. 6620

Q. Well, was it prior to the occasion when you struck Goddard? A. My brother had been working there when I struck Goddard.

Q. Was your brother employed there at the time you struck Goddard? A. He was.

Q. Now, at the time you hit Goddard had the man with Goddard whom you can't identify attempted to serve you with some legal papers? A. No, sir.

Q. I am referring to legal papers in a civil litigation. A. No, sir.

Q. Did the man with Goddard attempt to serve your brother Ed with papers in a litigation at the time of this incident? A. He might have. I don't know.

Q. Well, what is your best recollection as to whether that occurred or not? A. Well, I could not swear to it. 6621

Q. Now, think back over the incident and try to tell us what happened at that time. A. I don't remember any of that.

Q. You can't remember it? A. Not that. I mean as far as serving anybody with legal papers.

Q. I said attempting to serve your brother with legal papers. A. (Witness shakes head.)

Q. Have you answered my question? A. Yes, sir.

Q. What was this other man doing there with Goddard, if you know? A. I don't know.

Q. Did your brother Ed threaten to beat the man with Goddard up? A. No, he didn't threaten to beat him up.

Q. What did he threaten to do? A. He didn't threaten him at all.

Q. Did your brother Ed have any conversation with the man with Goddard while you were hitting Goddard? A. Well, when I turned around he just told this Mr. whatever his name is—I don't know what his name is—he told him something about—"Do you see what you are causing?" That is what I heard.

6623 Q. Apparently your brother Ed knew the man who was with Goddard; is that a fact? A. I don't know whether he does or not.

Q. It is your recollection— A. There was three or four men there. There was two or three drivers——

Q. No, I am speaking of the man you told us was with Goddard. And it is your recollection that your brother Ed said in your presence at this time to the man who was with Goddard, "Now, you see what you caused." Is that right? A. Yes, something to that effect.

Q. And was that all that was said between Ed Weinheimer and this man who was with Goddard? A. I don't know. I went over and paid for what gas I got and left the gas station.

6624 Q. That is all you heard, in any event? A. That is right.

By the Court.

Q. Was there a man named Martin there on that occasion? A. Yes, sir.

Q. And a man named Gillen? A. Yes, sir, that is right; there was two or three gas station attendants.

By Mr. Cahill.

Q. You told Mr. Murray that you were working right up to date for the Young Transportation Company; is that true? A. That is right.

Q. Now, in between 1937 and the present have you had anything to do with an over-the-road trucker named Fred D. Langdon? A. Will you make that more explicit?

Mr. Cahill: May the stenographer repeat it?

The Court: Yes. Read the question.

Q. (Read.) A. I have not had anything to do with him directly, no, sir. 6626

Q. Well, do you know Mr. Langdon? A. I do not.

Q. Do you know his company? A. I know his company, yes, sir.

Q. Do you know that the company is an over-the-road trucking company with point of origin in up-state, New York? A. Yes, that is true.

Q. Were you present, or were you ever present when your brother Ed had a conversation with Fred Langdon? A. No, sir.

Q. Isn't it a fact that another brother of yours, one James, was about to work on the Langdon trucks in 1939?

Mr. Murray: I object to it on the ground that it is immaterial. 6627

The Court: Sustained.

Q. Well, when did your brother James become a member of Local 807? A. He applied for membership——

Q. No. I asked you when did he become a member of Local 807.

Mr. Murray: I object on the ground that it is immaterial.

The Court: Overruled.

A. He applied for membership——

Q. No. I asked you when he became a member.

The Court: No. When did he become a member, if you know.

The Witness: He never became a member in 807.

Q. Now, isn't it a fact that James was about to work on the Langdon trucks at your request or Edward's request in the spring of 1939?

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Mr. Murray: I object to the form of the question.

The Court: Sustained.

Q. I will ask you first, isn't it a fact that Langdon was caused to hire your brother James? A. No, sir.

Q. In 1939? A. No, sir.

Q. Either by you or your brother Ed? A. No, sir.

Mr. Murray: I object to the form of the question.

The Court: Sustained.

Q. Now, do you know an 807 man named Charles Howe? A. I might have.

6630 Q. Well, do you or don't you know an 807 man named Charles Howe? A. I don't know whether his name is Howe or not.

Q. He is a colored man. A. I don't know Howe. I know Charles Howard.

The Court: Is he a colored man?

The Witness: Yes.

Q. He is a colored man? A. Yes.

Q. And he is an 807 man? A. I think so.

Q. Now, do you recall going to Charles Howard's house in March of 1940? A. No, sir.

Q. Do you recall having a conversation with Charles Howard in regard— A. No, sir.

Q. (Continued) In regard to Howard's working on the Langdon trucks?

Mr. Murray: I object, if your Honor please.

The Court: Yes or no.

A. No, sir.

Q. Do you recall having been present when anybody had a conversation with Charles Howard about Howard's working on the Langdon trucks? A. No, sir. 6632

Q. Did you have any conversation with your brother Ed about Charles Howard working on the Langdon trucks?

A. No, sir.

Q. You say you do know Charles Howard? A. Charles Howard, yes, sir.

Q. Tell us when and where did you first meet Charles Howard.

Mr. Murray: I object to it on the ground that it is immaterial and irrelevant.

The Court: I will allow it.

A. I think, if I am not mistaken, he hangs around a truck—— 6633

The Court: It is not a matter of where he hangs around.

The Witness: That is the first time——

The Court: The question is where did you meet him, if you first met him.

The Witness: 29th Street.

Q. And where? A. Tenth Avenue.

Q. Now, did Howard ever work for Langdon? A. No, sir.

Q. Are you sure of that? A. Positive.

Q. Did Howard to your knowledge ever apply to Langdon for work? A. I don't know. He may have.

Q. Well, have you any knowledge on the subject? A. I have not.

Q. You have never conversed with either Langdon or Howard about Langdon hiring Howard; is that your testimony? A. That is my testimony.

Q. Now, have you been convicted of crime? A. No, sir.

6635 Q. Weren't you convicted in the year 1936 of disorderly conduct in New York City? A. No, sir.

Q. You were not? A. No, sir.

Q. Weren't you convicted in the Magistrate's Court of this City on July 31, 1936, of disorderly conduct? A. No, sir.

Q. Did you receive a suspended sentence in the Magistrate's Court of New York City on July 31, 1936, for disorderly conduct? A. No, sir.

Mr. Murray: I object, if your Honor please.

The Court: Overruled. He said "No, sir."

Mr. Murray: I move to strike the answer out.

The Court: Strike it out.

6636 Mr. Murray: Now I object on the ground that even if he did receive a suspended sentence for disorderly conduct, that it is not a crime.

The Court: Well, I will sustain the objection. The proper way to prove what the case was is to produce the complaint here.

Q. Do you know a driver named George Reiso? A. I do.

Q. How long have you known him? A. Oh, approximately two years.

Q. Now, did you ever have a conversation with Reiso in July, 1939, in regard to hiring another 807 man; that is, a man other than yourself in New York City? A. I had a conversation with him in July, but it wasn't in reference to hiring an 807 man; it was in reference to he had a load of batteries on his truck, and he was in Brooklyn——

Q. A load of what? A. Batteries; and the consignee called up, and I am the only one in charge at this end, and wanted to know why there wasn't a man on the truck that was able to take the batteries off the truck; that the man that was on the truck did not want to take them off 6638
because he wanted to sleep; and I explained to the man there that that was his own truck and that he would have to pay a man a day's pay in order to go over there and take the batteries off the truck; and that is why he did not want to hire a man, because he had to pay the day's pay.

Q. Did you ever threaten George Reiso with physical violence in July, 1939, if he did not put you on that truck? A. I did not.

Mr. Cahill: That is all.
The Court: Any redirect?
Mr. Murray: No.
The Court: Next witness.
(Witness excused.) 6639

6640 *Joseph G. Needelmann—For Defendants—Direct.*

JOSEPH GEORGE NEEDELMANN, residing at 457 Williams Avenue, Brooklyn, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Needelmann, how old are you? A. Twenty-eight.

Q. Married? A. Yes, sir.

Q. Are you a member of Local 807? A. Yes.

Q. When did you become a member? A. May 15, 1937.

Q. Now, before you became a member of that union, Mr. Needelmann, what occupation did you follow? A.
6641 Truck driver.

Q. Whom did you drive for? A. Needelmann Motor Truck.

Q. Where was the Needelmann Motor Truck located? A. 27th Street and Tenth Avenue.

Q. How long did you drive for that concern? A. About a year or a year and a half; something like that.

Q. Were you in any way connected with the Needelmann Motor Trucking Company outside of being a driver? A. No.

Q. Who conducted that concern? A. Needelmann himself.

Q. Was he any relation of yours? A. My father's cousin.

6642 Q. Now, before you worked for the Needelmann Motor Trucking were you employed some place else? A. I worked for Odora.

Q. How do you spell that? A. O-d-o-r-a.

Q. What kind of concern was that? A. Manufacturers of closets.

Q. Where was their place of business? A. 27th and Tenth Avenue.

Q. How long did you work for that concern? A. A couple of months.

Q. Now, Mr. Needelmann, did you ever meet Paul Ellsworth Koontz, a driver for H. Earl Pitzer of Biglerville, Pennsylvania? A. I did.

Q. Do you remember when you first met him? A. The fall of 1937.

Q. Do you know where? A. Over at—well, he came in after the contract was signed.

Q. Do you know whether or not Pitzer had a contract with Local 807? A. At that time?

Q. At any time? A. No.

Q. Do you know whether or not he signed a contract? A. He signed it in November, 1937.

Q. When is it you say he signed the contract? A. No- 6644
vember of 1937.

Q. Was it November 19th? A. Around that time.

Q. Do you recollect that Koontz testified here that he saw you down at Beach Street and that you said to him that if he didn't put a man on the truck that you would run the truck in the river? A. I never told him anything like that.

Q. Did you hear him testify to that in substance? A. I did.

Q. Did you have such a conversation with Koontz? A. No.

Q. Did you recollect the circumstances under which you first met him? A. No. Well, previous to Pitzer signing the contract, a few days before I met him for the first 6645
time and he came over to me and said Pitzer told him to pick me up to go to work.

Q. Do you know whether that was before or after Pitzer had signed the contract? A. Before.

Q. Do you know how long before November 19th of 1937? A. About three or four days.

Q. Did you ever meet Mr. Pitzer? A. I did.

Q. Do you recollect when you first met him? A. About the beginning of November, 1937.

Q. Now, under what circumstances did you meet Mr. Pitzer? A. He told his road driver he wants to meet me——

The Court: Where did you meet him?

The Witness: William R. Houck, the broker.

Q. Where was Houck's place of business? A. 100 Hudson Street.

Q. Did you meet Pitzer there by appointment? A. That is right.

Q. Do you know how the appointment was made? A.
6647 He told his road driver through the telephone while I was unloading the truck that he is going to be down next Monday to meet me at 9 o'clock.

Q. And did you meet him at 9 o'clock? A. I did.

Q. Did you have a talk with Pitzer at that time? A. I did.

Q. Will you be good enough to tell the jury what that conversation was? A. He came down Monday morning at 9 o'clock and there was a truck downstairs and he asked me if I had somebody to go to work today. I told him yes. And Venditti went out to work that day.

Q. Who went out to work? A. Venditti.

Q. We are having some difficulty in hearing you, Mr. Needelmann, because you are not keeping your voice up. A. He asked me if I had a man for him that day. He
6648 said, "A truck is in." I said, "Yes." I told him, "Venditti is here," and he went out to work. From there me and Pitzer went up to Houck's and we sat down there and he introduced me to a few people over there. Then he wanted to know what it was all about, about the contract, and I explained to him. I said, "Why don't you go over to the union hall and they will explain you?" So he said he had no time to go over. So I told him, "How is the best way you could find out?" He said, "Well, your meet me later

this afternoon. I got an appointment with somebody and I will see you later in the afternoon, about 3 o'clock." He did come back and went up there again to William R. Houck's and he was talking again about it and he asked me how he can get a contract. About 4 o'clock Venditti came back from work and he asked him to go over there. He brought a contract back from the union and handed it to Pitzer.

Q. You mean Venditti did? A. Yes. He said, "I will take the contract home," and give him a few days to think it over. I said, "That is good." "Meanwhile," he said, "the trucks will come down and you go to work." The next day a couple of trucks came down, Thursday. The 6650
road driver told me that—Paul Koontz told me Pitzer would like to see me and Venditti. I told him I had no way of getting out there. we had no money. He said he will take care of it. We got on the truck and we went out there.

Q. Where? A. Biglerville.

Q. Pennsylvania? A. Yes.

Q. How long did it take you to get to Biglerville on the truck? A. Well, we went straight through, no stops. It took us about nine or ten hours.

Q. Do you know how many miles it is from New York to Biglerville? A. Over 200 miles.

Q. Now, when you got to Biglerville did you see Mr. Pitzer? A. I did.

Q. Where did you see him? A. He had an old shack 6651
there. He told me it was his office, and we were talking——

Q. Well, did you have a talk with him? A. I asked him what he wants to see us about, so he says he didn't want to speak tonight, it was kind of late.

The Court: What time was it?

The Witness: About 10 o'clock. He says, "I will take you over to the hotel in Biglerville and

you and Tony can go to sleep," which we did. The next morning he called for us about 9 or 10 o'clock. We ate breakfast in the hotel and rode around with him. He invited us over to a football game but we told him we got to get started going home. From there we went over to his house and talked things over.

Q. Well, now, did you have a talk in his house? A. I did.

Q. Did you tell him in substance that he had to sign a contract? A. No, sir.

6653 Q. Did you tell him that if he didn't sign a contract that his trucks couldn't operate in New York? A. I did not.

Q. Who was present besides Venditti and yourself when you were talking to him? A. I think his wife was there.

Q. Was she there all the time the conversation was going on? A. No. She was another room. She was in the kitchen, I think. They had an eight-room house.

Q. Well, did you use any profane language in Mr. Pitzer's house? A. No, sir.

Q. In the presence of his wife? A. No.

Q. Well, finally after you talked with Pitzer what did you next do? A. Well, he says, "I got the contract in my pocket." I said, "I think the best thing is to sign it," and he asked me if I would be good enough to bring it back 6654 to New York. I told him he should mail it, it will get there Monday morning or so. So he said it is best for me to take it back, which I did. We shook hands and he invited us to go over for a drink. There was a truck waiting to go back to New York and I told him the sooner we got back the better off we were.

Q. Did he give you anything to take back to New York with you? A. Well, previous to going to his house he showed me around the country——

Q. No. Did he give you anything to take back to New York? A. Yes. He gave me a case of tomato juice.

Q. Did you take it back? A. Yes.

Q. How did you get back to New York from Biglerville? A. By truck.

Q. You mean you rode on Mr. Pitzer's truck back? A. Yes. We had a load for the next morning in Greenwich Village.

Q. A load of what? A. Canned goods.

Q. Now, did you see Mr. Pitzer again after you had talked to him in his home in Biglerville, Pennsylvania? A. I did.

Q. When did you next see him? A. Some time in October, 1938. 6656

Q. Do you recollect where you saw him on that occasion? A. The Hotel Times Square.

Q. How did it come that you went to the Hotel Times Square? A. How is that?

Q. How did you come to go to the Hotel Times Square? A. There was a truckman that I knew down on Greenwich Street by the name of Fred Lang. He saw me—Lang—and he told me Pitzer had called me and wants to see me and Venditti at the Times Square Hotel at 8 o'clock, and I went up there with Venditti.

Q. Well, did you have a talk with Pitzer at the Times Square Hotel on that occasion? A. I did.

Q. What was the talk? A. Well, he says to me, "Listen, George, a new contract is due now. What do you want to do about it?" I told him, well, it is up to him, he has been operating the last couple of years all right, no bother, and all that, and he is satisfied; what does he have—— 6657

The Court: When was this conversation?

Mr. Murray: I think he said October.

The Witness: October, 1938. About October 14th or 15th.

The Court: All right.

The Witness: And he says to me, "How about if I give you $500, you should just forget about the job?" So I said, "If that is what you invited me up here for," I said, "I will take a walk. Anybody who goes to work on that job works for a day's pay." That is what it was all about.

Q. Now, Mr. Needelmann, do you recollect a witness named Wilmer Fidler? A. I do.

Q. Who testified here that he was employed by Mr. Pitzer at Biglerville? A. I do.

6659 Q. Do you recollect that in substance he said in the summer of 1937 that he saw you strike and kick a man on someone else's truck? Do you recollect that testimony? A. I do.

Q. Did you strike a man on someone else's truck? A. No, sir.

Q. When did you first meet Fidler? A. November, 1937.

Q. Did you know Fidler in the summer of 1937? A. I did not.

Q. Did you know Mr. Pitzer in the summer of 1937? A. I did not, no, sir.

Q. Did you know any of Pitzer's drivers here in New York before October or November of 1937? A. I did not.

Q. Do you recollect that Fidler testified here in this court that in the spring of 1937 at Washington and Hud-
6660 son Streets that you said to him, "If you know what is good for you, you won't unload your truck," and that "A half dozen of us will get you and beat the hell out of you, or we will run the truck in the river as we have done before"? Did you hear him testify substantially to that? A. I did.

Q. Did you have such a conversation with him? A. It was impossible——

Mr. Cahill: I move to strike it out.
The Court: Strike it out.

Q. Did you have any such conversation with him? A. I did not.

Q. Did you know him at that time? A. I did not.

Q. Did you ever work on any truck that Fidler worked on? A. When?

Q. After, say, November, 1937. A. After November, 1937, I did.

Q. Did you ever have any disputes with Fidler? A. Never did.

Q. Were there any hard feelings as far as you knew—— 6662

Mr. Cahill: Objected to.

A. No.

Q. Between him and you?

Mr. Cahill: Objected to as leading.
The Court: Sustained.
Mr. Murray: Exception.

Q. What was the relation between you and Fidler when you did work on Fidler's truck? A. Friendly.

Q. Did you say in the presence of Fidler in the summer of 1937 that you were short of cash and that you were going out and try to catch yourself another gypsy, "I need the money"? A. I did not. 6663

Q. Now, Mr. Needelmann, were you ever employed by the Salem Express of Salem, New Jersey? A. Once in a while.

Q. Did you know Mr. Hooks? A. No.

Q. Did you know Mr. Ruhl? A. No.

Q. Did you ever work for either one of them? A. Never did.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. Now, Mr. Needelmann, you say that you met Mr. Pitzer pursuant to an appointment you made through a road driver of his, is that right? A. That is right.

Q. Was that the first contact that you had with any of Mr. Pitzer's drivers when you made that appointment? A. No. I worked a couple of weeks.

Q. You hadn't caught these trucks, had you? A. No, sir.

Q. You never caught any of Pitzer's trucks, did you? A. No.

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Q. In fact, you never caught an over-the-road truck in New York all your life, did you? A. No, sir.

Q. I show you this paper marked Government's Exhibit 8 for Identification and ask you in whose handwriting it is. A. (Witness looks at paper.)

Q. Can you tell us in whose handwriting it is? A. Mine.

Mr. Cahill: I offer it in evidence.

(Mr. Cahill hands paper to defendants' counsel.)

Mr. Murray: Your Honor, I object on the ground that I don't find any addressee on this so-called letter.

The Court (after looking at paper): Overruled.

Mr. Murray: Exception.

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(Government's Exhibit 8 for Identification received in evidence.)

The Court: I am admitting this upon the testimony given by Pitzer, the fourteenth witness in this case. He testified that he was asked by the witness Needelmann if he had received his letter and the letter was thereupon produced and marked Exhibit 8 for Identification. Now the witness says that the

paper which was marked during the course of the examination of Pitzer is in his handwriting. Therefore I admit it. It is a declaration of his.

Mr. Murray: As I understand it, the allusion wasn't made to this particular letter.

The Court: Well, the jury will remember that. If they want it, they can have that testimony read if there is any doubt about it.

(Mr. Cahill reads Exhibit 8 to the jury.)

The Court: I think we will suspend at this point, Mr. Cahill; and I wish to say this to the jury: In view of the conditions which prompted me to fix 11 o'clock temporarily as the hour of reconvening, we will continue that and will adjourn now until 11 o'clock on Monday, but I would like to begin on Tuesday at half-past nine and sit through until half-past one and then adjourn for the day, as I am sitting in this room in another case in the afternoon, if that will be agreeable to you, and I am giving notice now so that everybody will be able to adjust himself, and I am hopeful of this case being concluded during the coming week. So we will recess now as far as the jury are concerned until Monday at 11 o'clock, and I will take up with counsel now the matter that they discussed with me in chambers. 6668

Mr. Cahill: Will your Honor instruct the witness not to confer with anyone? 6669

The Court: Yes. The witness is not to talk with anyone until his cross-examination is finished.

(Argument in Judge Hulbert's chambers on May 18, 1940.)

(Case adjourned to May 20, 1940, at 11 A. M.)

New York, May 18, 1940;
11.30 A. M.
(In Chambers.)

Present:

MR. MURRAY.
MR. BOUDIN.
MR. CAHILL.
MR. ENNIS.
MR. BURLING.

The Court: Go right ahead, gentlemen.

Mr. Boudin: Now there are two things with respect to
6671 which, unfortunately, Mr. Maguire and I were working on more or less independently. That is, Mr. Maguire prepared those two memoranda which he submitted to me, and then he asked me to prepare a list of questions and so forth, to see if I could put it down in more specific form. I do not know that I have covered all of the ground that Mr. Maguire covered in his memorandum so far as facts are concerned, and I was trying to put it more in the form of direct statements so that your Honor will see just what we want to prove.

Has your Honor seen this thing that I have prepared?

The Court: No, I have not seen that.

(Memorandum handed to Court.)

The Court: I know. I see there are eleven subdivisions of an offer of proof. I suppose we might just as well run
6672 through them because I do not imagine everybody here has had a copy.

No. 1 reads: "That for years past the Teamsters' unions of this country have endeavored to segregate over-the-road drivers from City drivers into separate groups or categories, so as to limit each group or category to its special kind of work."

Now what is the materiality of that?

Mr. Boudin: Well, that of course is introductory to the further problem. Now here is the way I look at it, Judge: The Government says we attempted to keep outsiders from coming to New York and doing work here, or drive here.

The Court: Well, the Government's contention is that you did it by violence. That is their contention.

Mr. Boudin: Judge, that is a different problem. That is just it. I want to segregate the problem of violence from what we were trying to do so that we have a record, if we should have to go on appeal, in which it would clearly appear that the only reason we are here in court is because of claims of violence. Now that makes a substantial difference. For instance, I would like to know not only 6674
whether it is the position of the Government that if we could limit, say, the employment in New York City to our men without the use of violence, that would not be an infraction of the Anti-Trust Act. I am not speaking now of the Anti-Racketeering Act. First, the anti-trust law, which I think may be more important. Frankly, I doubt whether the Anti-Racketeering Act is involved in this, but the Anti-Trust Act may be involved depending on how we read it. Now, I not only want to know their position, but I want to have a record which would clearly bring that fact out. Now, we might agree on certain things. In other words, the Government might make a concession, or permit us to make a formal offer of proof, or concede certain facts. If, for instance, the only objection to this is 6675
that they are not charging us with that, and the only thing is the involvement of violence and the fact that we did it by violent means, the Government ought to admit——

The Court: Let me ask you this: Is it your intention, for example, with respect to the proof under paragraph 1, that that will be in the form of documentary proof or will be by——

Mr. Boudin: No formal witnesses.

6676 *Proceedings.*

Now I want to explain further that we want to show that it was not merely an attempt because we did not want outsiders to come into New York City, but we also did not go into other cities because we wanted to separate the two categories of work, for reasons which I will explain further.

I desire to offer proof to show that it was necessary both for the maintenance of proper standards of living and standards of wages, as well having order in the industry, that these two should be segregated.

The Court: Well, you have a right to use methods for the purpose of carrying out such a policy if you do not
6677 resort to violence. That is the law.

Mr. Boudin: All right. Will the Government concede that if we had obtained all of those contracts without the use of violence it would have been proper?

The Court: No, I don't think the Government is called upon to concede that.

Mr. Boudin: Well, I am not discussing the problem whether they are called upon technically. Your Honor, I would like to explain it; I do not want to try a case upon one theory and then if it goes against me to be met with another theory on appeal.

The Court: Let us look at these other paragraphs. Of course, I am not speaking for the Government. Mr. Cahill is here for that purpose. I am indicating that it is no more proper for me to call upon Mr. Cahill, unless he
6678 wishes to express himself voluntarily, to state what the Government will concede, than I do that Mr. Cahill, for example, should call upon the defendant attorneys to admit something which they cannot be required to admit; and if I permitted it in the presence of the jury, it would be prejudicial. That is the reason we are having this session.

Now let me go on.

No. 2: "That in pursuance to such endeavors many Teamster's unions, particularly in the large cities where the organizations were strong, succeeded in so segregating the said classes of work."

That is, that the unions did?

Mr. Boudin: Yes.

The Court: No. 3: "That in many collective bargaining agreements between Teamsters' unions and employers of teamsters provisions are made recognizing the said segregation, and providing that each category should be limited to its class of work."

Well, that involves a question of comparison with respect to what teamsters' unions may have done in other communities for the purpose of achieving the results that have been achieved, and whether the union here has followed the same policy, or whether they have followed some other policy. 6680

Mr. Boudin: You mean so far as means are concerned?

The Court: Means, yes.

Mr. Boudin: Well, as I say, none of this touches the problem of means.

The Court: I think that certainly does touch the problem of means: "That in many collective bargaining agreements between Teamsters' unions and employers of teamsters provisions are made"——

How have they been made? That is the question. They have been made and recognized the segregation and provide that each category shall be limited to its class of work. 6681

Mr. Boudin: Yes.

The Court: Now, suppose that a union down in Ohio obtained every favorable arrangement with the employers down there on the question of the segregation through collective bargaining? There cannot be any question about that. That is what the law provides for, authorizes. Now suppose in some other community—we will take for ex-

ample up in Massachussetts—suppose that a collective ba gaining agreement was made up there where a greate amount of violence preceded it than has possibly be charged in this case, then you would have to go into th element, wouldn't you?

Mr. Boudin: No, if your Honor please. Your Hon misses the point I am trying to make. Let me explain. has to do with my view of the problem before us. I claim I may be wrong on that——

The Court: Well, if you are wrong then I have m missed the point.

Mr. Boudin: No, here is what I mean: We are to ha

6683 a session to accomplish something practical. Now M Cahill and I may agree on certain things which wou eliminate my attempt to prove for one purpose, and he ma not, for what I have in mind. Now if we can agree on ce tain things, we will eliminate any attempt to prove certa things.

The Court: Do you think he is going to agree on an thing with respect to purpose if he does not kno what you have in mind?

Mr. Boudin: No, but assuming it is peaceful. That why I leave out the question of means. Would he concei that those purposes would be right if obtained peacefully by peaceful means?

Then we come to the question of what is peaceful mean The question of "peaceful" is also not a very simple on

6684 For instance——

The Court: It has not been very well defined.

Mr. Boudin: Yes. For instance, would a request t R. C. Williams not to receive merchandise from somebod be a peaceful means or not? That is a different proble There are three problems involved, one, whether certai purposes are legitimate no matter by what means obtaine For instance, under the anti-trust laws certain objectio are illegal per se. If you want to monopolize an industr it makes no difference by what means it would be illeg

Then there are certain things which are permissible provided they are done peacefully; and then there is the problem whether "peacefully" means peacefully or also lawfully, because those are different categories; and what I was trying to do is to get somewhere so we do not have to spend two or three weeks in an effort to prove something that we may not be fighting about. That is the actual purpose. So if your Honor will read it through—Mr. Cahill, did you look at it all?

Mr. Cahill: Yes, we have looked at it.

The Court: No. 4: "That such segregation has been found necessary or expedient for the following reasons: 6686

"(a) In the interests of the efficiency of the industry, as it permits of specialization of each kind in its work.

"(b) In order to diminish the danger of accidents by the development of special skill in both city and over-the-road driving in their respective categories, and also by reason of the circumstances stated under (c), (d) and (e).

"(c) In order to protect the drivers against excessive hours.

"(d) In order to secure for the drivers a definite period of rest as well as a proper place of rest, by severing the over-the-road drivers from his truck after the completion of the over-the-road trip. 6687

"(e) That the practice of employing a driver and a helper to do both the driving and the loading and unloading is an evil by reason of the fact that it does not give either of the men a sufficiently long period of sleep because of the accompanying practice of changing off in the driving while on the road, and also by reason of the fact that a truck does not furnish a real opportunity either for sleep or rest.

"5. That the combination of over-the-road and city driving is coming to be recognized as an evil not only by labor unions but also by employers; and that all or most employers who favor collective bargaining also have the segregation of drivers into separate categories of over-the-road drivers and city drivers.

"6. That the segregation of drivers into separate categories of over-the-road drivers and city drivers is also necessary for the protection of wage scales of the drivers living in communities in which higher wage scales prevail, and in which the cost of living is usually higher, and particu-
6689 larly for the protection of the wage scales and standard of living of teamsters residing in large urban communities against unfair competition from drivers living in rural or semi-rural communities or small towns.

"7. That the segregation of drivers into over-the-road and city drivers is made necessary by the special character of the over-the-road industry in that the service is usually performed between two points having a different standard of living and therefore necessitates or requires a different scale of wages. That in this respect, the over-the-road industry is different from any other industry which has a definite location in which the scale of wages may be adjusted to the standard of living. That unless the workers engaged in that industry are segregated as between
6690 over-the-road drivers and city drivers, the standard of wages at the point of higher level, which is usually the larger city, would be in danger and would tend to sink to the lower level existing at the other end of the line.

"8. That by reason of the aforesaid circumstances—namely, the danger of the demoralization of the scale of wages prevailing in the larger of the two cities between which the service operates—the segregation of teamsters

into said two categories is necessary also in the interests of the employers whose businesses are located in the larger cities, since the lower scale of wages paid by employers located at smaller points enables those employers to compete unfairly with the employers located in the larger cities with respect to freight between the two localities or districts involved.

"9. That the maintenance of the higher scale of wages and generally better conditions of employment prevailing in larger cities, in which the stronger unions are located, is only possible through collective bargaining agreements with those unions, at least with respect to the work done 6692
within those cities:

"10. That as a matter of actual fact, it is only those employers who are opposed to collective bargaining who are opposed to the segregation of teamsters into over-the-road teamsters and city teamsters, respectively, and therefore to the employment of city teamsters within the City of New York.

"11. That the amount of time required for the physical operation of loading or unloading a truck bears no relation to, and does not furnish the measure of, the actual time required to be given by a teamster employed to load or unload the said truck. That the teamster so engaged is required in connection with his duty of loading or unload- 6693
ing—and particularly the latter—to spend a considerable amount of time in waiting for the appearance of the truck, which is seldom certain; and even more so by looking for the opportunity to unload, which frequently requires standing in line or driving around the block until the place of unloading becomes free and accessible. That this is true even in cases of so-called straight loading; and that it is multiplied by the number of places at which delivery is to be made in case of diversified cargoes."

The Court: In that connection——

Mr. Boudin: Pardon me. Eleyen is in a different category.

The Court: Yes. Just let me ask a question: It is your contention that the International Federation has adopted by either any statute of its own or resolution, or in any other manner, any standard for the purpose of classifying over-the-road drivers and city drivers so that that policy will be a guide to the subordinate unions of the locals with respect to what a local, for example, in New York may do, having in mind what has been prescribed as a policy by the International Union with respect to the locals in the communities from which the trucks come?

6695 Mr. Boudin: No, it is not our contention that the International Brotherhood of Teamsters has adopted such a constitutional plank, but this has been left to the regional organizations to arrange among themselves and various regional conferences have done so. In other words, it is not merely something that happened in New York, but that the problems in all large cities——

The Court: Is it divided up into regional districts by the International?

Mr. Boudin: No, but there are conferences. For instance, there is a conference known as the Central Pennsylvania Conference. It is a voluntary conference within the International, and the locals within a certain region will meet and arrange their special problems; and that

6696 this segregation has been bruited in many of these conferences, and many of these conferences have adopted such rules. And in pursuance—these are of course voluntary, not obligatory—some unions thereupon in various points of the country, or this part of the country in which we are interested, have actually put it into their contracts with their employers. So that, for instance——

The Court: Well, what I am getting at is, has there been any action by any regional division that has been submitted to the International body for approval?

Mr. Boudin: No.

The Court: In other words, has the International body undertaken to work out a policy for the whole country——

Mr. Boudin: I don't think so.

The Court: ——that could be taken as a pattern, so that whatever may be done by a local or by a regional division will be in consonance with a general pattern that has been established for the country as a whole?

Mr. Boudin: Well, I would say no. In the course of ordinary events, these things do not become part of the International Constitution until many regions have adopted it voluntarily. The International tries to leave these things to the local organizations. They do not interfere with their autonomy. 6698

The Court: Is the New York region with established boundaries?

Mr. Boudin: No, New York City is what we call the metropolitan district——

The Court: Does that extend into New Jersey and Connecticut?

Mr. Boudin: That extends into part of New Jersey and Connecticut. Mr. Maguire would know that better than I would.

The Court: How far does it extend into New Jersey and Connecticut?

Mr. Boudin: I really don't know. I have heard about forty miles, or thirty-five miles limit referred to. I assume that is what it is. I am not competent to speak on that. 6699 Your Honor will bear in mind I am not the regular attorney for the union. Mr. Maguire is. He is familiar with these details. I was only brought into this case——

The Court: What I am trying to get clear in my mind is whether there might be a policy, for example, for, say, the metropolitan region, and there might be a policy for the region in which Philadelphia would be the center, and there might be a policy for a region

in which Pittsburg would be the center, and there might be another policy for a region of which Buffalo, we might say, would be the center—now how would we treat the policy of a region where the trial is progressing with respect to what you want to show the previous conditions were, the early history, for example, of the over-the-road motor trucking and its development, into the recognition of its division or category of employment, if you did not have, by comparison, what is going on in other regions from which these trucks came? Suppose, for example, we are concerned here with a truck that comes from the Philadelphia region or the Pittsburg region,

6701 and that region has a policy, and the truck driver is pursuing the policy in that region, and he comes into New York and he finds that the policy in the New York region is different?

Mr. Boudin: No, we tried to establish it is not different. That is just the point, if your Honor please. Let me take one actual situation in our actual case. Your Honor will notice that there was no difficulty with any Philadelphia drivers of any Boston drivers. Now the reason for it—the jury is not here, so I may discuss it—is that the larger cities all follow our policy and segregate. No Philadelphia man will come to New York and say, "I want to distribute here."

The Court: Well, I am not talking about a Philadelphia man; I am talking about a man who is in the

6702 Philadelphia district.

Mr. Boudin: Well, I will explain it to your Honor—

The Court: For example, take York, Pennsylvania: A man who may be trucking from York, Pennsylvania, to Philadelphia would be subject to different conditions, if there were a different policy in that region, from the conditions if he were trucking into New York. That is what I am getting at.

Mr. Boudin: Let me explain, your Honor. We know there is no difference in policy. There are different scales of wages, but no different policy. To make myself clear, York, for instance, is so near Philadelphia that they will have no problem, because a man makes the trip in one day. But York and New York, for instance, are in different regions, and we will try to prove that York itself objects to these men doing the work in New York. There is no conflict between York and New York. That is just the point which we are trying to establish. When these men come here and try to unload in New York, we are not the only ones objecting, but their own unions object to that. That is just the point we are trying to 6704
make. Their own unions object, except unions that are under suspicion, that we claim are not bona fide unions, like, let us say, the Vineland union; but York, which is a bona fide union? I say that the York local itself says that their men should only deliver to New York, to the boundary, and should not do any work in New York, and that we are not conflicting with them. That is the very point I am trying to bring out.

The Court: But hasn't the York local got control over its drivers?

Mr. Boudin: Yes, but they cannot police them. They cannot, from that end, police them. They say to us, "Why don't you stop them?"

We are trying to prove, as a matter of fact—we have 6705
to serve various subpoenas, and that is why we are asking this question so we do not have to argue this in the presence of the jury—we have subpoenaed an officer of the York local. We asked him to produce their contracts, their standard contracts, and we intend to prove by their own local and by their own standard contracts that they do not want their men to work in New York City; so that we are not depriving the York driver of a right that the York local gives him. On the contrary,

we are trying to harmonize; and part of our offer of proof is that the only way of doing this is by segregating these two——

The Court: Well, is the Vineland local a member of the International?

Mr. Boudin: The Vineland local is a member of the International. Now, your Honor has had some labor cases and you have had labor clients. You know what it is. The International, under the rules, seven men can apply for a charter. Seven men submit an application for a charter, and they get a charter. The International cannot police it. Now, there is evidence in this case, for instance, that a Vineland local existed at one time and then disappeared, and then came into being again.

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And then we intend to prove by other proof outside of this proof that the Vineland local was not a real local but was being organized to combat certain conditions in New York City as the occasions arose. In other words, when the New York City locals were not touching them, and they did not care, then there was no Vineland local; but when the city local was on the job and trying to organize, they got together and organized the Vineland local as a means of fighting the New York local.

The Court: Why should the International recognize the Vineland local under those circumstances?

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Mr. Boudin: They do not know anything about it. I will give your Honor an actual situation: In the City of Washington there is a furriers' union that was part of the American Federation of Labor, consisting of some 35 or 40,000 men, International Fur Workers Union. There was no other organization of furriers in the country. One day in 1935 or 1936 that organization pulls out from the American Federation of Labor and joins the C. I. O. Six months later or three months later there is a strike in the City of Washington in one place. They

had nine employees in that place. Seven of them made an application to the American Federation of Labor for a charter. They don't know. So they give them what is known as a federal charter. Naturally, they are happy that carriers are becoming—they do not know it is merely for the purpose of breaking a certain strike. They cannot watch all of these things. They cannot watch a Vineland local to see whether it is a bona fide local or not. It is up to us to watch it. It is our bread and butter that is involved, and therefore we naturally watch it.

Now, we complained to the York local. That is why we happened to get the official of the York local to come 6710
here, and we expect to put him on the witness stand.

Now, the Vineland local we could not get because they are not a bona fide local. They are controlled by the employers. They are unfortunately a company union. Unfortunately there are people that have charters that are not bona fide locals. What we are trying to do is to bring the real situation into view.

Some of it may be illegal anyway. Mr. Cahill may argue that we have no right to segregate it. That is a legal problem, and that I am ready to argue with him before your Honor or before any other Court; but when we are discussing the problem of the offer of proof, it is what will go before the jury, because ultimately your Honor will have to charge the jury in accordance with the proof offered; and if there is an appeal, we have to 6711
argue it on the basis of the evidence that is there; and in order to avoid arguments and also in order to clarify—frankly, I want your Honor and I want Mr. Cahill to understand my point of view—what is the purpose of offering this testimony; and I am going to say very frankly to your Honor that I am going to argue ultimately that means are not within the Anti-Trust Law. In other words, there are two acts. There is a Racketeering Act and an

Anti-Trust Act. I claim the Anti-Trust Act deals only with objectives irrespective of means, and the Anti-Racketeering Act, on the other hand, deals only with means irrespective of objectives. In other words, violence falls under the Anti-Racketeering Act. Objectives, regulations, agreements, rules for work and so forth—those belong to the Anti-Trust Law. I may be wrong on that, but that is my theory. And I am trying to prepare my record, if there is to be a record on appeal—and a lawyer must always think of that, and I always do, because usually I am more of an appeal lawyer than a trial lawyer—and I must of necessity look at the
6713 record from an appeal point of view, and I think this is the kind of a case in which I should. It is not an assault case; it is not an ordinary crime case. It involves a public policy, and therefore you must look into it from the point of view——

The Court: Mr. Boudin, if the District Attorney does not prove there was a conspiracy, and if he does not establish the elements of that conspiracy, that is the end of his case.

Mr. Boudin: Of course, but, Judge, let me assume that he does——

The Court: You are getting into the field, when you discuss the Sherman Act and the Clayton Act, and the Norris-LaGuardia Act and the Wagner Labor Relations Act in with them, you are getting into the distinction be-
6714 tween restraining a labor union by injunction in an equity suit and a case in which the Congress of the United States have authorized the prosecution of a conspiracy; and I cannot believe that there cannot be a conspiracy, if the facts are established, by a labor union just as well as there can be one by the Catholic Church.

Mr. Boudin: I do not say no. Your Honor is mistaken if you think I say no. In my last brief in the Supreme Court in the Apex case I specifically pointed

out that, for instance, a case like the Local 167 case in which a union could be held as a conspiracy, was correctly decided. I do not take the broad position that a labor union cannot be proved a conspiracy. I have never taken that position, and that is not my argument. My argument is differentiating when a union goes out of its way and tries to establish price of a commodity—I say then they are part of a conspiracy; but when they want to unionize, organize, establish higher wages and regulate the trade, let us say, by segregating—let us put it that way—regulate by segregating over-the-road work from City work, or with one man doing over-the-road and one man doing City work, then I say they are not violating the Anti-Trust Act. I may be wrong on that. But I want the record to show. 6716

The Court: As I said before, I think the presumption is that a labor union is organized for a legitimate purpose, and as long as they carry out their objects and purposes by lawful means, they have a right to do it under any law. Now, if there is evidence that they have adopted any unlawful means, and that unlawful means amounts to a conspiracy, and the Government has sustained its burden, that is another matter; but those facts must be established by the Government by the required measure of proof, and it seems to me that is all there is in this case. The issue is a simple one.

Mr. Boudin: I must disagree with your Honor on this point. Let me go on and try to explain. A man goes on the witness stand and says that George Needelmann or Ed Weinheimer or George Dillon, whatever the name is, told him that he must employ 807 men, or if not, he cannot unload in New York. Now, that may be all kinds of things. That may in itself be a violation of the Anti-Trust Law irrespective of the means. For instance, if Ed Weinheimer goes into R. C. Williams or Seeman Bros. and procures their refusal to accept the 6717

load unless it is unloaded by an 807 man, that may or may not be a violation of the Anti-Trust Act, depending on how you construe it. It has nothing to do with violence in the ordinary sense.

The Court: I would say it depends on the circumstances under which the consent of the R. C. Williams Company in that instance was obtained.

Mr. Boudin: That is right. Now, would your Honor say—I am trying to follow your Honor's train of thought so as to guide myself in the offer of proof, because that is the practical problem before me today—if a man has testified that one of the defendants said—and let us as-
6719 sume for this purpose that it was proven that this was the policy of all of the defendants—that "We will not permit the unloading of any truck here from outside of New York City unless it has an 807 man"—the means employed being the persuading of R. C. Williams, Seaman Bros., and all other consignees in New York City—without showing what the means employed by us were, would your Honor say they have failed in proving a conspiracy within your understanding of the law because they have not shown violence? Or would the burden of proof be on us to show that we have not used violence, or, rather, that we have used only persuasion, or would Mr. Cahill and your Honor take the position that this is in itself illegitimate even if he used only persuasion?

Now, these are three different situations, and, frankly,
6720 I am worried what kind of a case am I trying. What am I supposed to meet? And I think an exchange of views on that subject, provided they are in a form that protects us on the record, are important.

The Court: That is what we are here for.

Mr. Boudin: Well, exactly. That is the purpose of this. I have done so far most of the talking. Maybe Mr. Cahill wants to say something.

The Court: Mr. Cahill, has Mr. Boudin reached the point where you feel you want to reply?

Mr. Cahill: Yes, your Honor, if we may. And with your kind permission, Mr. Burling will speak for us.

The Court: I am glad to hear from Mr. Burling.

Mr. Burling: If your Honor please, I would like first to advert to Mr. Boudin's suggestion that the Government exchange views. I have for many years admired Mr. Boudin's scholarship in the field of law we are now discussing, and I am probably as interested in it as he is; and as an individual lawyer I would like to discuss it, but I do not think it is part of the Government's function to discuss hypothetical or abstract issues.

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In this case the indictment sets forth what the crime charged is, and we will, as we have indicated to your Honor in the memorandum submitted last night, intend further to clarify the Government's contention as to what the crime charged with respect to the Sherman Act is. And any discussion on the part of the Government as to whether some other set of facts might or might not be a violation of the Sherman Act seems to be entirely beside the point.

Mr. Boudin: May I interrupt for a minute to say that I have not had the benefit of your memorandum, so I do not know just what you have in mind.

Mr. Ennis: I guess Mr. Maguire got it.

Mr. Boudin: I think he gave it to me, but I have not had a chance to look at it. I just want Mr. Burling to know that.

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Mr. Burling: I do not believe as representatives of the Government it would be appropriate for us to take a position as to whether or not, if only peaceful means had been used to accomplish the end sought in this case, there would or would not be a violation of the Sherman Act, because that is not what the record shows and is not the position the Government takes with respect to this case.

The Court: Well, Mr. Burling, I would like you to understand that the Court is not suggesting that you do that.

Mr. Burling: Yes, your Honor.

The Court: I asked a question of Mr. Cahill whether Mr. Boudin had reached a point where your side desired to make any reply, and I leave it entirely to your own discretion to make any reply that you want to make. I mean I do not want either counsel to feel that I am trying to force any issue here outside of the issues that are defined by the indictments themselves.

Mr. Burling: Yes, your Honor.

6725 Mr. Boudin: I take it, your Honor please, that all of this discussion is merely to help us in arriving at the problem of whether this offer of proof is proper?

The Court: Well, I will say this, Mr. Boudin, if it will help; although, of course, it is not provided for by rule, but this is very much analogous to a pretrial in a civil suit in that we are trying to save time, if we can.

Mr. Boudin: Yes, and perhaps unnecessary explosions in front of the jury, which I assure your Honor I am as anxious to avoid as anybody.

The Court: Well, I do not worry about that, because the jury can always be excused.

Mr. Burling: Perhaps I can come directly to the point. I think the Government will decline to concede the correctness of any of the statements in the offer of proof on the
6726 ground that all of the material set forth in the offer of proof is irrelevant to any issue to the case at bar. The Government conceives the case in which it is prosecuting the defendants as a conspiracy to operate a racket, as defined in 420-A of Title 18.

The Court: That is so far as the second indictment is concerned.

Mr. Burling: No, your Honor. That is the nature of the crime charged in both indictments. As was said by

Mr. Cahill in the argument on consolidation, we do not charge two different crimes. We charge one conspiracy. We charge a conspiracy, which I will describe factually as a conspiracy to extort sums of money from over-the-road truckers by use of force and threats of force.

We say that conspiracy is, by Section 420 (a) of Title 18, made a violation of the Anti-Racketeering Act. We further say that that conspiracy, since it involves the physical stoppage of interstate transportation by truck, violates the Sherman Act; but we have only one conspiracy that we are dealing with. Since the course of conduct that the Government charges as criminal under both statutes necessarily involves the use of violence and 6728
the use of physical force, physically to halt interstate trucks, we say that there is no question of reasonableness of burden upon interstate commerce whatever. I have a memorandum, which I will submit to your Honor in a moment, which is in reply not so much as to what Mr. Boudin has argued this morning, but as a reply to Mr. Maguire's memorandum of law that the rule of reason, as such, which is to be found in the Standard Oil case——

The Court: Which one?

Mr. Burlin: It is in 221 U. S.

The Court: I remember that, but I thought that went out the window.

Mr. Burling: Your Honor, our position is that the rule of reason, as such, never, or at least since the enactment of the Clayton Act, had any application to a case in- 6729
volving the Sherman Act to a labor union. Your Honor is of course familiar with the fact that there is no case that can be found anywhere—I think Mr. Boudin will agree with me—with the exception of the International Window Glass Manufacturers' case, cited by me in my memorandum, in which any court in the majority opinion discusses the rule of reason as applied to a labor union, or discusses as such the reasonableness in restraint imposed by a labor union upon interstate commerce.

It is our position that the reason for that is that prior to 1914 there was increasing concern as to the effect of the Sherman Act upon interstate commerce. In 1914 Congress enacted the Clayton Act, which, to a very considerable extent, clarified the law relating to the labor unions and the anti-trust laws; and Section 6 of the Clayton Act says that no persons engaged in lawfully carrying out the legitimate objects of a labor union shall be deemed to have violated the anti-trust laws; and it is our contention that that is the statutory codification——.

The Court: It all turns on the word "legitimate".

Mr. Boudin: Yes, that is just the purpose. It is the
6731 legitimate—and if you will permit me, Mr. Burling——

Mr. Cahill: Would you mind letting Mr. Burling complete his statement?

Mr. Boudin: Excuse me. I thought he had finished.

Mr. Burling: Since the Clayton Act, with the exception of the Window Glass case, which has no application at all—it is a case involving both manufacturers and laborers—there is no case as such involving the rule of reason. The language in all the cases is, is the union lawfully carrying out its legitimate object? And I submit the reason for that is that a labor union which is interfering or restraining interstate commerce, which is not lawfully carrying out its legitimate objects, must of course be unreasonably burdening interstate commerce. That is, if it is not lawful or not legitimate, it is unreasonable.

6732 Now coming to the application of that thought to the instant case, we argue that the violation of the Sherman Act charged here is a violation, and which is a course of conduct of the same kind as the operation of a racket, a shakedown, under the Anti-Racketeering Act.

Now taking up first the Anti-Racketeering Act, that is a question of fact which the jury will determine, which we do not need to argue at the moment; but assuming that the jury does find that the course of conduct of the defendants

amounted to a racket under the Anti-Racketeering Act, and assuming further that they find that interstate commerce was physically halted—that is, the traffic in trucks was interfered with—we submit that that makes it clear beyond peradventure that the union was not engaged in lawfully carrying out its legitimate objects, because surely no court could hold, and I do not think Mr. Boudin would argue, the operation of a shakedown racket is the lawful carrying out of the legitimate object of a union. In other words, if the Government prevail on the Anti-Racketeering Act indictment and the jury find that the course of conduct of the defendants was a racket, it could not possibly be the lawful carrying out of the legitimate objects of a labor 6734
organization. Nor could it be a reasonable burden on interstate commerce.

I am sure Mr. Boudin will agree that if the defendants are engaged in halting trucks in furtherance of a conspiracy to extort money in a racket, that burden on interstate commerce could not be called reasonable. For that reason, and because of this view, we submit that the question is exclusively one of—was the conspiracy a violation or was the conspiracy a racket? If it was a racket, there is no possible way in which any evidence could show that it was reasonable. A racket cannot be reasonable. There is no offer of proof which could be conceived of which would show that the use of force and violence, as required in Section 420(a) of the Anti-Racketeering Act, the use of force and of violence to extort sums of money, could be 6735
reasonable; and so any general background of the trucking industry would be entirely irrelevant.

Then, if I may, I would like to make a few other observations in response to the argument made by Mr. Maguire in his memorandum.

The Court: Go ahead.

Mr. Burling: In the first place, the cases cited by Mr. Maguire on page 2 of his memorandum, the supplemental

discussion of the facts sought to be proved—on page 2 of his memorandum he cites a series of cases. Those cases stand for the general proposition that the rule of reason is applicable to determine whether or not a general combination is or is not a violation of the Sherman Act, but not one of those cases has any bearing whatever on any problem relating to labor.

Mr. Maguire has not adverted to Section 6 of the Clayton Act in his argument on that point, even though it appears clear that Section 6 of the Clayton Act is in fact the statutory statement or the rule which Congress has laid down codifying and embodying the rule of reason as
6737 applied to labor unions.

Then on page 3 Mr. Maguire has listed in a different fashion the evidence sought to be proved, but it substantially corresponds to the offer of proof; and all that I think necessary to say here is that since it is the Government's position that the question of whether the conduct of the defendants constituted or did not constitute the lawful carrying out of the legitimate objects of a labor union is to be determined by whether or not they are operating a shakedown racket here, this evidence is irrelevant, since none of the evidence discussed on page 3 of Mr. Maguire's memorandum could have any bearing on the question of whether or not the defendants were operating a racket.

I would like briefly to mention the next argument of Mr.
6738 Maguire, which is on the Norris-LaGuardia Act. He argues that that act is applicable, and I am unable to see exactly how he thinks it is applicable, because I am unable to understand how that could be applicable. As your Honor of course well knows that act expressly limits its scope to dealing with the jurisdiction of the courts to issue injunctions in civil cases. There isn't anything in the act which has any application to the criminal proceeding. And since this is a criminal proceeding, and there is no question of issuing an injunction in this case, I cannot see what the Norris LaGuardia Act has to do with it.

But aside from that point, which is of course controlling, there is a further discussion concerning means of carrying on a labor dispute which are rendered non-enjoinable. I suppose there is some inference that those means are proper means; but the Government is not considering those means. We are not trying the defendants on some set of means they say they used. The question which will be before the jury is, Did the defendants do what they are charged with doing, namely, operate a racket; and the question of whether or not acts rendered non-enjoinable by the Norris-LaGuardia Act are also non-criminal—that is an argument we do not need to deal with here.

On page 11 of Mr. Maguire's memorandum, Mr. Maguire 6740
correctly points out that Section 420(d) of the Anti-Racketeering Act provides that the Anti-Racketeering Act shall not be construed so as to diminish or in any manner affect any right which a bona fide labor organization has under the existing statutes. And then he further points out that the Norris-LaGuardia Act was an existing statute at the time of the enactment of the Anti-Racketeering Act.

Well, of course, that is true, but it has no bearing, because the construction we are asking this Court to put upon the Act is that when a labor union or an organization calling itself a labor union operates a racket, that is, extorts money, which is not the payment of wages by a bona fide employer to a bona fide employee, but is payment of money of another character by force and violence in a 6741
manner affecting interstate commerce, then that is a crime defined by the Anti-Racketeering Act.

The Court: Well, my thought about the effect of the Norris-LaGuardia Act is that it was a rebirth or vitalization of the Clayton Act so far as the restrictive powers of injunction had been used by the courts, as Congress thought, to a greater extent than Congress intended.

Mr. Burling: I entirely agree with you.

The Court: And, in other words, made lawful acts which had theretofore been construed as unlawful; but it never was intended to and did not go to the extent of making lawful anything that was a crime, if there was any act committed that was a crime.

Mr. Burling: I entirely agree with you.

The Court: That is my conception of the Norris-LaGuardia Act, and I had considerable to do with it at the time of its passage.

Mr. Burling: That is entirely the Government's view also.

Now I would like to make one or two further observa-

6743 tions——

The Court: I think, as I recall it, Judge Murreh specifically limited his statement to Section 20.

Mr. Burling: Yes, your Honor. That is, Section 20 of the Clayton Act which was restricted by the courts which led to the movement which culminated in the enactment of the Norris-LaGuardia Act. It appears to be Section 20 which was revitalized.

The Court: That is my understanding of it. I think that is what Judge Murreh said. He said in so far as Section 20 is concerned, or words to that effect. I do not know if those are the precise words.

Mr. Burling: And, of course, Section 20 of the Clayton Act is a listing of various means of peacefully carrying on a labor dispute; but we are not concerned with peace-

6744 ful means. That is the hypothetical question that Mr. Boudin posed and which I said we do not need to commit ourselves on.

The Government is charging here the use of physical force and physical violence and threats of physical force and physical violence.

The Court: And that you must establish.

Mr. Burling: Yes, your Honor, but that is a question of fact.

The Court: Yes. But you must establish that. If you fail to establish it, that is the end of the case.

Mr. Burling: Certainly, your Honor. That is the burden that the Government agrees it must carry.

Now, there is one other point: I might say in passing that there is an argument made by Mr. Maguire that there must be some showing, in order to have a conviction under the Anti-Racketeering Act, that the force and violence was wrongful, to wit, in violation of some existing criminal statute of the United States or of any State or territory. Of course, the Government has introduced evidence of numerous acts in violation of other criminal statutes.

Then on page 14 there is a quotation by Mr. Justice 6746
Frankfurter in a labor injunction where in discussing the use of the word "threat"—I would like to make clear that the Government is not using the word "threat" ambiguously as might be inferred here that Mr. Justice Frankfurter criticizes. The Government by "threat" means threat as charged: first, wrongful use of force or fear, or of threats thereof. That is not ambiguous; it is precise. We mean threats of force or physical violence.

And there is an argument on page 17 as to whether the defendant union can be held, and the degree of ratification and so on. Of course, the Government agrees that there must be sufficient proof of participation in the conspiracy by the union, but that has no part in the issue now before your Honor. So I think the argument——

Mr. Boudin: That I will agree on. I agree with Mr. 6747
Burling that the question of degree of ratification is not involved in this problem of offer of proof.

Mr. Burling: In other words, as I have already said, it is our position that there is only one substantive course of action, and that is that the Government has the burden of showing that that course of action involved violence and force, and that no amount of proof which could be offered would make reasonable the use of violence and

force, and threats of violence and force to operate a racket in violation of Section 420; and for that reason the Government submits that any evidence on general background of the trucking industry is irrelevant and immaterial; and it further urges that it be excluded on the ground that it would greatly confuse the issues in the case.

That is all.

The Court: All right, Mr. Boudin.

Mr. Boudin: I would like to say to your Honor, and I would also like to explain to Mr. Burling, that I am not seeking to discuss abstract questions that are not involved. I have adverted to them in order to explain my
6749 position. I am faced with a practical problem, and I am seeking a practical solution. I will say frankly what my practical problem is. It is this: Neither your Honor nor the Court of Appeals is bound by Mr. Burling's view of the case. My practical difficulty is this: Under well-settled rules, which we need not discuss here, if there is a conviction by a jury the appellate court will sustain the conviction if there is any legal theory upon which the conviction may be sustained. Now, neither your Honor in charging the jury, nor the Court above, if it should ever go to the Circuit Court of Appeals or the Supreme Court, would be bound by the theory here expressed at this conference by Government's counsel, and you would have to look at the record. The record must therefore be in a position that we may show on what theory it was
6750 tried, and why if we did not meet certain evidence that may be there, why we did not meet it; and that is the practical purpose of this offer of proof.

Now let us look at it from a practical point of view: There are two indictments under the Anti-Racketeering Act and under the Anti-Trust Act, and it is my view—and I must naturally worry if my view is sustained as well as if it is overruled—and if is my rule on behalf of the union, as such, the union cannot be indicted under

the Anti-Racketeering Act. I am not worried therefore about the union being held liable or being convicted, or a conviction being affirmed against the union on the Anti-Racketeering Act. I am worrying about the Anti-Trust Law. Now, when I come to the Anti-Trust Law, the problem of our objectives—and that is where your Honor puts the finger on the head—have they proven something that might be considered an improper objective, unless we show that there was an improper objective, or unless there is conceded to be?

What I am worried about, and what the offer of proof, with the exception of No. 11, is directed to proving, is that the objectives were proper; so that if we can prove 6752
here, or if we go on appeal, and I can sustain my theory that the means are not important and it is purely a problem of objectives, I have proper objectives in the record so to say; and therefore the problem of objectives is, to me, of primary importance; and this offer of proof deals exclusively with problems of objectives. In other words, the proof is intended to show not that force was proper, if used, but that the objectives were proper, and therefore we can discuss the problem first whether force was used, which is a matter for the jury; and then if it goes to the higher court, it is a question, assuming force was used for a proper objective, whether we come within the Anti-Trust Act or not. Clearly we would not come within the Anti-Racketeering Act. I am speaking of the individuals, not the union. 6753

On the problem of objectives we intend to show that this limiting of the work of unloading or loading to City men, as they put it, by men of 807, or intent to monopolize that work against other unions or other workers, is in pursuance to union policy of segregating the work; and we also intend to show that this policy of segregating the work was in itself a legitimate objective because of conditions

in the industry, and are proper objectives in maintaining a standard of living and standard of wages.

If the Government is not concerned with that, and if their attitude is that this is purely irrelevant, then it seems to me that this problem can be solved by the very simple means of making this offer of proof; the Government raising the point only that it is irrelevant; and then if the Court rules that this is irrelevant, then we are protected by a proper exception when we go above, if we have to, on the eventuality, which I would like to avoid of course, that this problem was not involved here; and the conviction may not be sustained on the ground that we
6755 have not shown the objectives to be legitimate, even though the Government never questioned an objective and really was trying the case as an anti-racketeering case, even though under two statutes.

I mean that is the nub of my position, and that is the problem I am faced with, and the solution I suggest.

Mr. Burling: As I understand your solution, you offer the proof and the Government objects.

Mr. Boudin: Yes. And if the Court rules it out we have the proper protection. But you object only on the ground that it is irrelevant? In other words, if it be not deemed relevant and therefore the Court rules it out——

Mr. Burling: Are you distinguishing between irrelevant and immaterial?

The Court: No, I could not pass on the competency
6756 because it would not be in such form.

Mr. Boudin: Yes, that is really the point. You are not raising competency?

The Court: There would not be anything in the form that its competency could be determined, assuming it is relevant.

Mr. Cahill: That suggestion is entirely agreeable to us.

Mr. Boudin: The only purpose, frankly, I want my record clean, and that is all I am after. I want my record

clean. I do not want to be met with a situation which you yourself don't intend to have in the case; and frankly, I am worried about the statements "You can't unload in New York." And I think we ought to meet it that that in itself, if we had not used any violence, would have been proper.

The Court: Of course, Mr. Boudin, what you are suggesting here is what the civil rules now provide for: that whenever we reach a point in a case and some testimony is offered and the Court excludes it, the party against whom the ruling is made is entitled to offer it anyway; and if it is a jury case, not in the presence of the jury; and if it is an equity case, it would not make any difference——

Mr. Boudin: Your Honor would realize—— 6758

The Court: Wait. I am only saying what the principle is. We do that in civil cases, because when the case goes up on appeal the Court on appeal, the testimony having been received, they can dispose of the case without the necessity for a new trial. Now, that is the civil theory. Now, you want to limit what the civil practice is here by an offer of proof and if the Court rules that that proof is not admissible you want the record to show the nature of the proof so that the Court, if upon an appeal, feels had the testimony been received it might have affected the result and that the Court moreover erred in refusing it, that you have something of a substantial character to present to the Court on your appeal if you were not permitted to put the evidence in during the trial.

That is the whole point. 6759

Mr. Boudin: Yes.

The Court: Gentlemen, I am going to consider this matter further over the week-end, and if you gentlemen want to say anything further, you may do so Monday, and I will indicate Monday the disposition of it, and we can go on with the trial Monday.

I assume from what Mr. Murray has stated, that the presentation of the testimony of the defendants themselves

will take all day Monday; and as I have indicated to you I will have to be off Tuesday afternoon for the three-judge court case; so that we can go on Tuesday from 9.30 up until 1.30, depending upon the ruling which is made on this offer of proof. That will put you in a position either to make your offer, say on Monday or Tuesday, or to present your proof on Wednesday.

Mr. Boudin: Yes.

The Court: If any part of it is to be allowed. Then we will be in a position to move along with the case without any loss of time.

6761

New York, May 20, 1940
10.55 A. M.

TRIAL RESUMED.

(The following proceedings were had in the Court's chambers adjoining the court room:)

The Court: Please note on the record that when I came down this morning to go on the bench counsel were here, and it appears that there was some misunderstanding about when the opportunity would be afforded for any further argument; that I have been in my chambers since 10 o'clock where the matter was heard on last Saturday

6762 and I supposed it would be continued there and then would not be any question about it. It is now a minute of eleven, and if anybody wants to be heard further, I will hear them during the recess.

(The following proceedings were had in the court room:)

(The clerk called the roll of defendants and all were present.)

The Court: Proceed.

JOSEPH GEORGE NEEDELMANN, resumed the stand.

Cross-examination (continued) by Mr. Cahill.

Q. Now the fact is, Mr. Needelmann, that you did talk to Mr. Pitzer on the telephone before ever your met him face to face; isn't that so? A. That is right.

Q. Now, did you talk to Mr. Pitzer for the first time on the local or the long distance telephone? A. Long distance.

Q. And will you tell us, where did you get the telephone number of Mr. Pitzer? A. The over-the-driver called him up.

6764

Q. And did you talk on the phone to Mr. Pitzer after Mr. Pitzer's over-the-road driver had some conversation with him? A. Well, after he spoke with him a while he asked me if I wanted to speak with him—rather, Pitzer told him that he wants to speak with me, and I spoke about a minute or so.

Q. Now, what road driver was that by the way? What was his name? A. If I recall I think it was Don Miller.

Q. And where was this call place from, on the New York end? A. From Leo Benjamin's.

Q. Where is that? A. Over on Washington between Hubert and Beach.

Q. Is that a place of busjness or a restaurant or what? A. It is a wholesale grocery, bakery.

6765

Q. And did you have some conversation with the driver before the telephone call was put in? A. I don't remember what it was.

Q. Well, how did you meet the driver that morning? A. What was that?

Q. How did you come to meet that over-the-road driver that morning? A. I was working two weeks already. I was working every day with him.

Q. Tell us where you met him the first time ever you met this over-the-road driver. A. Reese & Bernard.

Q. Where? A. Reese & Bernard.

Q. Did you approach the over-the-road driver on that occasion? A. I did not.

Q. Were you at this Reese place when first you met this over-the-road driver? A. I was walking along the street—

Q. What street were you walking along? A. North Moore.

Q. And what happened? A. It was about 7.30 in the morning, a quarter to eight, the platform man called me to back in. I said, "Back in where?" He says, "Ain't that
6767 your truck?" I says, "No." "Well," he says, "you better call that fellow." I went over and I called the road driver on the truck; and he asked me if I was a union man. I told him yes. He says he has had his union man out in Brooklyn, but he is out there with a truck, and if I want to go to work I could go to work, which I did.

Q. You were sort of a leader in this matter of unloading over-the-road trucks, weren't you? A. No, sir.

By the Court.

Q. Well, had you been working for Pitzer before this particular morning that you have just referred to? A. No. He asked me if it was the first time—how I ever met the truck, and that was the first time, over in Reese
6768 & Bernard's.

By Mr. Cahill.

Q. Well, you referred to "my men" from time to time, did you not? A. Well, I was working three weeks on the job; two or three weeks.

Q. Will you just answer my question? Isn't it a fact that on more than one occasion you referred to others as "my men"? Isn't that true? A. My men?

Q. Yes. A. I don't know the meaning of it.

Q. You never used that expression? A. No.

Q. Quite sure about that? A. That is right.

Q. Now let me call to your attention from Plaintiff's Exhibit 8 in evidence the following, which is a letter to Pitzer which was read on Friday, and I am quoting in part: "Another of my men have to work the second truck." A. Well, he had known about the other men——

Q. Now, do you recall using that expression? A. Well if it is written I must have wrote it.

Q. Well, do you recall using it? A. No.

Q. Is this the only time that you referred to others as "my men"? A. No. 6770

Q. Now, tell us who were those referred to by the expression "my men." A. Well——

Q. Give us their names. A. Tony. That is all that was working on the job with me. Tony Venditti.

Q. Well, this is plural, "another of my men." Will you give us the names of the others you referred to? A. There was no others.

Q. Well, did you put anybody else to work on the Pitzer trucks besides Tony? A. When?

The Court: Any time.

Q. Any time. Maybe six months later there were men working.

Q. Well, give us the names of all the men that you put 6771 to work on the Pitzer trucks at any time. A. You mean up to the present?

Q. I will take it from June 1, 1938. A. I don't remember who worked till then.

Q. You can't give us the name of anybody but Tony Venditti? A. I don't recall who it was.

Q. You haven't any recollection? A. No.

Q. Well, I will take it up to the end of 1938. Can you give me any other names? A. Fanelly.

Q. How about Max Katz? A. I don't remember when he worked on it.

Q. Well, did he? A. I don't remember.

Q. You have no recollection of whether Katz worked or not? A. No.

Q. Did Pitzer put a notation on his checks to which you objected at one time? A. I think he did.

Q. Do you recall describing that notation as a vicious notation? A. That is right.

Q. What was the notation you referred to? A. He wrote
6773 me a letter; not a check.

Q. What was the thing you referred to as a vicious notation placed on Pitzer's check? A. I don't remember on a check; but I remember on a letter he sent me down.

Q. You have no recollection of what the vicious notation on the check was? A. No.

Q. You haven't the slightest idea? A. Well, I can't explain it when I don't know what it was.

Q. Did it have anything to do with the word "protection"? A. No.

Q. Did it have anything to do with the word "racketeering"? A. I don't remember.

Q. You haven't the slightest idea? A. No.

Q. Do you recall, however, wiring Mr. Pitzer about the
6774 vicious notation that appeared on his check? A. I don't recall it; I might have.

Q. Have you no recollection of wiring him on that subject? A. I might have. I don't remember. It is a few years ago.

Q. Well, do you recall joining in a wire with Max Katz about the vicious notation that appeared on the check? A. I wouldn't recall? A. I haven't seen it for a long time.

Q. Do you recall joining in a wire with Tony Venditti and Max Katz? A. Joining?

Q. Joining in a telegram to Pitzer with Tony Venditti and Max Katz about the subject of vicious notations appearing on Pitzer's checks to Venditti? A. I don't recall.

Q. When did you first meet Max Katz? A. I don't remember the day.

Q. Well, what is your best recollection? A. I can't exactly recall when.

The Court: Well, how long have you known him?

The Witness: About a year and a half, two years. 6776

Q. When for the first time did you join Local 807? A. May 1937.

Mr. Cahill: I ask that this paper be marked for identification.

(Paper marked Government's Exhibit 80 for Identification.

Q. Can you give us any time when Katz first went to work on the Pitzer trucks? A. I don't remember.

Q. What is your best recollection of when you first met Katz? A. I said about a year and a half ago, two years ago. 6777

Q. You can't place it any more definitely than that for us? A. No.

Q. I show you Government's Exhibit 80 for Identification and ask you if you have ever seen the original of that paper before? A. I never seen this.

Q. You never saw the original of that before? A. No.

Q. Are you quite sure of that? A. That is right.

Q. I mean you are positive? A. That is right.

Q. You never saw the original of that before? A. Yes.

Q. Did you represent to Mr. Pitzer at any time that you had control of what over-the-road drivers would be allowed to come into the City of New York? A. What is that again?

The Court: The stenographer will repeat the question.

Q. (Read.) A. What do you mean control?

The Court: Don't you know what the word "control" means?

6779

The Witness: Control of the drivers?

Q. Do you find that you can't answer my question? Is it not clear? A. It is not clear to me.

Q. Did you ever tell Pitzer that any driver of whom you didn't approve was finished in New York City? A. No, sir.

Q. Did you ever tell Pitzer that any driver of his that gypsied a load into New York, if you found out who he was, he was finished in New York? A. No.

Mr. Cahill: I will ask that this paper be marked for identification.

6780

(Marked Government's Exhibit 81 for Identification.)

Q. I show you Government's Exhibit 81 for Identification and ask you if you have ever seen that before? A. (Examining paper.)

Q. Have you seen that before? A. Yes.

Q. In whose handwriting is Exhibit 81 for Identification? A. My handwriting.

Mr. Cahill: I offer Exhibit 81 for Identification in evidence (handing to defense counsel).

Mr. Murray: I object, if your Honor please, because this letter has to do with dates outside of the issues in this indictment.

The Court: Let me see it.

(Paper handed to the Court.)

The Court: The objection is overruled; and I will say to the jury that this communication is not taken as any evidence of anything that transpired within the period mentioned in the indictment, which is from December 1, 1937, to May 31, 1938, but is received on the question of the intent so far as this particular defendant is concerned. 6782

Mr. Maguire: Exception.

(Government's Exhibit 81 for Identification received in evidence.)

Mr. Cahill: Ladies and gentlemen, 81 in evidence reads as follows: It bears date December 5, 1938 (reading to jury).

Q. Mr. Needelmann, to whom did you refer when you used the expression again in Exhibit 81 "my men"; will you give us the names of the men you referred to? A. Well, Venditti, Fanelly. It might have been Downs.

Q. Whom else? A. I wasn't around every day for work. There were days I didn't come in. 6783

Mr. Cahill: I move to strike it out, if your Honor please.

The Court: Strike it out.

Q. Will you give us the list of persons that you referred to as "my men"? A. Well, that is all I know.

Q. Do you recall when you were in the union hall with Mr. Pitzer using the expression there "my men"? A. I was never in the union hall with Mr. Pitzer.

Q. You didn't go there when the contract was signed? A. No, sir.

Q. Who was your delegate on this job? A. At that time?

Q. Up to June 1, 1938, who was your delegate? A. I don't know of any delegate; there was no contract signed yet.

Q. Up to June 1, 1938. A. June 1, 1938? What was the question?

6785 Q. Who was your delegate up to June 1, 1938? A. Mr. Furey, Campbell, Clarke. He wasn't my delegate; he was the union delegate.

Q. Well, who was the union delegate on this job? That is, the Pitzer job. A. I never had no issue to call a delegate on a job.

Q. Never did? A. No, sir.

Q. Never threatened Pitzer as to what the delegate would do? A. No, only Pitzer threatened me.

Mr. Cahill: I move to strike that out.

The Court: Strike it out.

Mr. Cahill: I will ask that this paper be marked for identification.

6786 (Marked Government's Exhibit 82 for Identification.)

Q. I show you Exhibit 82 for Identification and ask you whether it refreshes your recollection as to who the delegate was on the Pitzer job? A. I never saw this before.

Q. I asked you if it refreshes your recollection as to who the delegate was on the Pitzer job. A. It don't.

Q. Beg pardon? A. It don't.

Q. It does not? A. No.

Q. Did you ever talk to any delegate about the Pitzer job? A. I might have.

Q. Well, did you or didn't you? A. I don't remember.

Q. You have not any recollection as to whether you did or not? A. I do not.

Q. You don't ever recall talking to Willie Campbell about it? A. No.

Mr. Cahill: I will ask that these two papers be marked for identification.

(Marked Government's Exhibits 83-A and 83-B for Identification.)

6788

Q. I show you first Government's Exhibit 83-B for Identification and I ask you if you have ever seen that before? A. I don't remember if I saw it, but it is in my handwriting.

Q. It is in your handwriting? A. Yes.

The Court: Which one is that?

Mr. Cahill: Government's Exhibit 83-B.

Q. Look at Government's Exhibit 83-A for Identification and tell us whether or not 83-A refreshes your recollection as to whether you ever saw Mr. Campbell about the Pitzer job. A. I don't remember if he ever sent it.

Q. Now would you just answer my question?

6789

The Court: Strike out the answer.

Q. Does it refresh your recollection, referring to Government's Exhibit 83-A for Identification, as to whether you ever saw Mr. Campbell about the Pitzer job? A. It won't.

Q. What is the fact? Did you speak to Mr. Campbell about the Pitzer job or not? A. No.

6790 *Joseph G. Needelmann—For Defendants—Cross.*

Q. Did you ever tell Pitzer that unless something of a definite nature happened, that Campbell would take action? A. I did not.

Mr. Cahill: I will offer 83-B for Identification in evidence. If your Honor please, A and B are affixed physically together, but I am not offering A at this time.

The Court: All right. Did the witness state whether 83-A was or was not in his handwriting?

Mr. Cahill: No, he said B, your Honor. I do not claim that A was.

6791 (Government's Exhibit 83-B for Identification received in evidence.)

Mr. Cahill: 83-B, ladies and gentlemen, is addressed to Mr. Pitzer. "Please send holiday pay as delegate will tie me up next time. Hereafter send pay every Friday. If truck does not come Friday please mail it to 457 Williams Avenue, Brooklyn, New York. George Needelmann. Dont forget to send social security card back."

Q. Now, Mr. Needelmann, did you object to union men working on the Pitzer trucks in New York City who were strangers to you? A. No.

6792 Mr. Cahill: I will offer these two papers for identification.

(Marked Government's Exhibits 84-A and 84-B for Identification.)

Q. Now I show you Government's Exhibits 84-A and 84-B for Identification and I ask you if you have ever seen them before. A. I didn't see this one (indicating).

Q. You never saw that before?

The Court: Which is that?

Mr. Cahill: That is A, if your Honor please.

A. No, it is not my handwriting.

Q. Do you know whose handwriting 84-A and 84-B are in? A. I do not know.

Q. You can't recognize the handwriting of either one? A. No.

Q. Never saw either 84-A or 84-B before, Mr. Needelmann? A. No.

Q. You are quite sure of that? A. Right. 6794

Q. Did you claim the right to work outside New York City at all, Mr. Needelmann, in regard to Mr. Pitzer's trucks? A. No.

Q. Never did? A. No.

Mr. Cahill: I will offer this paper for identification.

The Court: 85 for Identification.

(Marked Government's Exhibit 85 for Identification.)

Q. In whose handwriting is Government's Exhibit 85 for Identification, Mr. Needelmann, if you please? A. It is my handwriting.

6795

Mr. Cahill: I will offer 85 for Identification in evidence.

Mr. Murray: I object, if your Honor please, on the ground that there is no date fixed here.

The Court: May I see it?

Mr. Cahill: Yes (handing to Court).

The Court: Sustained.

Mr. Cahill: May I have a moment, please?

The Court: Yes.

Mr. Cahill: If your Honor please, I offer this on the same theory as the other.

The Court: I do not know whether you are offering this as something that transpired before the 31st of May or after the 31st.

Mr. Cahill: If your Honor please, since it is undated I have to take it on the hypothesis that it is after. I offer this as affecting the credibility, as being in the handwriting of the defendant, and as being addressed, as your Honor has seen.

6797 Mr. Boudin: That is objected to, if your Honor please.

The Court: Well, you may interrogate this witness for the purpose of ascertaining whether he knows when it was done or not.

Q. When did you write Government's Exhibit 85 for Identification, Mr. Needelmann? A. I don't remember.

The Court: Just show it to him.

(Paper handed to witness.)

The Witness: I don't remember.

Q. Well, have you no recollection as to when you wrote it?

6798 The Court: Just a moment. Let me have it. Suppose you take it in your hand that way and look at it and tell me whether that refreshes your recollection or not, and whether that has anything to do with it.

The Witness: I don't remember the year.

Q. You have no recollection whatsoever as to when you wrote 85 for Identification? A. No.

Q. Well, are you clear that you did not write it within the last year? A. I don't remember.

Q. Did you write it within the last six months? A. I don't recall.

Q. Did you write it within the last three months? A. I don't remember it at all.

Q. Haven't got the slightest idea of when you wrote it? A. No.

Q. No doubt it is in your handwriting, is it? A. Yes.

Q. It is in your handwriting? A. It is in my handwriting.

Mr. Cahill: I press the offer.

6800 The Court: Do you intend to call the person by whom you claim this paper was received to show or attempt to show the date when it was received?

Mr. Cahill: If your Honor please, I don't think I would be in a position as to date, and I press it on the question of credibility.

The Court: All right. I will overrule the objection, but I say to the jury now that this is not to be taken as proof of anything which may have happened prior to the 31st day of May, 1938, and irrespective of the date or it not having any date, as the case can be, it can be taken only on the question of the intent of this witness as a defendant in this case.

6801 Mr. Murray: The defendant excepts, if your Honor please.

(Marked Government's Exhibit 85.)

(Mr. Cahill read Exhibit 85 to the jury.)

Q. When, Mr. Needelmann, did you first start helping to unload the Pitzer trucks in New York City? A. October, 1937.

Q. October, 1937? A. Yes.

Q. Confining yourself to the period from October, 1937, to June 1, 1938, will you tell us did you work for anybody else other than Pitzer? A. Before October?

Q. No. My question is from the time you started for Pitzer, October, 1937, to June 1, 1938, did you work for anyone but Pitzer? A. The Needelmann Trucking.

Q. Anybody else? A. No. I worked on and off for him for four or five years.

Q. Now you are quite sure you didn't work for anybody else during that period, Mr. Needelmann? A. Not that I can recall.

6803 Q. Well, think for a moment and tell us can you recall whether you worked for anybody else during that period? A. No, I can't recall.

Q. Did you ever work for a man named Siebert? A. I think I did work one day.

Q. Did you ever work for a man named Pierce? A. I might have.

Q. Well, did you or didn't you? A. I don't remember.

Q. Well, a moment ago you said you didn't work for anybody but Pitzer except the Needelmann Trucking Company. Now I press you. A. I said I don't recall.

Q. Now I press you, did you work for Pierce as well? A. I might have. I don't know.

Q. You can't recall? A. No.

6804 Q. Did you ever work for the Fowser Fast Freight? A. I am still working there.

Q. When did you start working there? A. October, 1938.

Q. Did you ever work for anybody else during the period October, 1937, to June, 1938? A. I might have.

Q. Well, what is your best recollection? A. I might have. I shaped different jobs. I might get a day here and a day there.

Q. Were the only trucks you ever caught during the period October 30, 1937, to June, 1938, Pitzer trucks? A. I never said I caught them.

Q. I refer you to Government's Exhibit 8 in evidence: "If you have no contract as of now and you have two or three trucks caught, there is a separate pay of $9.42 for each truck." Do you recall using the word "caught" there? A. I might have.

Q. Well, did you or didn't you? A. Well, if it is there I must have used it.

Q. Is it the fact that you never caught any other trucks but Pitzer's?

6806

Mr. Boudin: I object to the form.

A. It is a fact.

The Court: I will allow it.

Mr. Boudin: Exception.

Q. And is it a further fact that you charged Pitzer $9.42 for each truck as of October 26, 1937, the date of Exhibit 8? A. No, sir.

Q. So that when you said in Exhibit 8, "If you have no contract as of now and you have two or three trucks caught there is a separate pay of $9.42 for each truck," you were stating something that was not a fact, is that true? A. Stating something that was what? 6807

Q. That wasn't the fact, is that true? A. I don't understand the question.

Mr. Cahill: May the stenographer repeat it?

The Witness: I mean the way it is worded.

The Court: He says he doesn't understand it.

Q. I quote you from this letter, Exhibit 8, "If you have no contract as of now and you have two or three trucks

caught there is a separate pay of $9.42 for each truck." I ask you whether when you wrote that in October, 1937, you were stating something you knew to be untrue?

The Court: Well, I will exclude that question.

Mr. Boudin: That I object to, if your Honor please, as to form.

The Court: I exclude it on my own motion. The sentence begins with the word "if".

Mr. Cahill: Yes, if your Honor pleases, but it refers, I submit, to the first clause——

The Court: Well, you can reframe your question in a more logical and more understandable
6809 form. I had some doubt as to what that meant.

Q. Referring to the sentence that I read to you, did you intend to convey to Mr. Pitzer that there was a separate charge of $9.42 for each of his trucks entering New York as of the date of this letter, October, 1937? A. If I meant to charge him? A. No.

The Court: No. When you wrote Mr. Pitzer—

quote the words for him.

Q. "If you have no contract as of now and you have two or three trucks caught there is a separate pay of $9.42 for each truck."

6810

The Court: What did that mean? What did you mean when you said that?

The Witness: Well, that time we were talking about—the road drivers were talking about a contract and all; they were telling me they were getting stopped here and they were getting stopped there, and they wanted a couple of steady men on the truck. I said, "Why don't you speak to Pitzer about it?"

They said, "We spoke once or twice, but we don't seem to make any headway. The best thing for you to do is to write a letter or get in touch with him." A few days later I sent this letter after I was working the truck may be about four or five days. The following week——

The Court: You need not go into the following week. I wanted to find out what you meant by this expression.

The Witness: Well, Pitzer must have told them to go to their different destinations. They said they didn't know what to do—the road drivers; they didn't want to go and unload themselves and they 6812
wanted us to work for them, and to express myself I gave them that letter, not knowing what it meant, and after that he got in touch with me, or I got in touch with him, and that is how he signed the contract.

The Court: Did you mean when you wrote the letter that if he had no contract with the union there would be a charge of $9.42 for each truck that came in?

The Witness: No.

The Court: And if there was a contract with the union that contract might make some other provision?

The Witness: Yes, it means if a contract was 6813
signed one or two men on the job was supposed to cover that job. I wouldn't know what happened if any truck went up to the Bronx or Brooklyn whether it was caught or what.

The Court: All right.

Q. Referring to the expression "my men" again, did Randazzo work on the Pitzer truck? A. I don't know. He might have.

Q. What is your best recollection?

The Court: Have you any recollection of whether Randazzo worked on these trucks or not?

The Witness: I have no recollection at all.

Q. As you sit there now you have no idea as to whether he did or not? A. I wouldn't know, because I wasn't around every day.

Q. Did Downey work on the Pitzer trucks before you did? A. Downey?, Yes, sir.

Q. He did? A. Yes, sir.

6815 Q. When for the last time did Downey work on the Pitzer trucks that you can recall?

Mr. Murray: You mean Downs, Mr. Cahill?

The Court: No, Downey.

Mr. Cahill: No, Downey.

A. I don't know the last time he worked on the truck.

Q. What is your best recollection? A. Well, I know I worked in the middle of October; it might have been a week before or a year before. I wouldn't know when he worked.

Q. Can you tell us the year? A. All I can go by is when I went on the job, the middle of October, 1937. Previous to that I don't know when and where he worked.

6816 Q. Did Downey ever work on the job after November, 1937? A. No.

The Court: Did Downey work on the job after you went to work?

The Witness: No.

Q. As a matter of fact you were the No. 1 man on the Pitzer job, weren't you? A. I was.

Q. And you picked the men who worked? A. I didn't pick no men; there was only me and Tony.

Q. Who picked Tony? A. Some days Tony wasn't around and somebody else went to work.

Q. And who picked Tony? I press the question. A. Earl Pitzer.

Q. Now, who else worked on the truck? A. I said Fanelly, Downs.

Q. Anybody else you can think of? A. There might have been more. I don't know what the names were.

Q. Have you any idea? A. No.

6818

Mr. Cahill: That is all.
The Court: Any redirect?
Mr. Murray: No.
The Court: Next witness.
(Witness excused.)

JACOB D. SCHMEHL, residing at 537 South Duke Street, York, Pennsylvania, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Maguire.

Q. Mr. Schmehl, are you connected with Local 430 of the International Brotherhood of Teamsters? A. Secretary, treasurer and business agent of Local 430. 6819

Q. And that local union is located at York, Pennsylvania? A. At 152 North George Street, York, Pennsylvania.

Q. Now, can you tell us whether or not W. Fidler, P. E. Koontz, R. T. Lescalleet and H. M. Wood ever became members of Local 430?

Mr. Cahill: I object to this as immaterial and as collateral.

The Court: Overruled.

A. The men were members.

The Court: No, just state whether they ever became members.

The Witness: Yes.

Q. Can you tell us when they became members of Local 430? A. In November, 1937.

6821 Q. Do you recall the dates specifically? A. I have a record of them in my pocket. I don't know if I am allowed to read it.

Q. Would you look at that record and tell us whether it refreshes your recollection as to the date when those men joined Local 430? A. R. T. Lescalleet——

The Court: No. Does it refresh your recollection?

Q. You are not permitted to read it. Does it refresh your recollection?

The Court: Does the paper which you now refer to refresh your recollection?

6822 The Witness: Yes.

Q. Without looking at the paper, can you now tell us whether those men became members of Local 430? A. In November, 1937.

Q. Can you give us the date in November? A. Not the exact date. It was in November, 1937.

Q. Now, do you know one R. E. Nolder? A. Nolder became a member of Local 430 about June, 1938.

The Court: You say about June, 1938?

Q. Have you any record that you can refer to that would refresh your recollection as to the exact time when Nolder did become a member of Local 430? A. I have.

Q. Would you look at that record? A. Yes.

Q. Now would you please put it away and, without glancing at it, without looking at it, tell us whether it refreshes your recollection as to when R. E. Nolder became a member of Local 430? A. June, 1939—1938.

By the Court.

6824

Q. Do you know what date in June? A. June the 3rd.

Q. Was that a meeting had of the local? A. I don't know. That is a date the man made application. He made application for membership.

By Mr. Maguire.

Q. Now, Mr. Schmehl, do you know H. Earl Pitzer of Biglerville, Pennsylvania? A. I never met Mr. Pitzer personally; I spoke to him over the phone, that is all.

Q. Is Biglerville in the territory covered by Local 430? A. Biglerville is in——

Mr. Cahill: Objected to as immaterial.

The Court: Sustained. 6825

Mr. Boudin: Exception.

Mr. Maguire: I respectfully except.

Q. Now, how far is Biglerville from York, Pennsylvania? A. Biglerville is twenty-four miles from York.

Q. Now, at any time between December 1, 1936, and May 31, 1938, can you tell us if Pitzer, H. Earl Pitzer, had a contract, union contract, with Local 430?

6826 *Jacob D. Schmehl—For Defendants—Direct.*

Mr. Cahill: Objected to as immaterial.
The Court: Overruled.

A. The Pitzer Trucking Company never had a contract with Local 430.

Q. Now, in this period, December 1, 1936 to May 31, 1938, did Local 430 of York have contracts with other over-the-road trucking concerns operating out of York and vicinity?

Mr. Cahill: Objected to as immaterial.
The Court: He may answer yes or no.

6827 A. Yes.

Q. And can you tell us approximately how many such contracts they had, the union had?

Mr. Cahill: I press the objection.
The Court: Sustained.
Mr. Maguire: I respectfully except.

Q. Now, did you know the union conditions and requirements with reference to wages, hours and working conditions——

Mr. Cahill: Objected to as immaterial.
Mr. Maguire: May I finish, please?
6828 The Court: Just a moment. Let him finish his question, please.
Mr. Cahill: I beg your pardon. I thought you did.

Q. (Continuing) ——from the period December 1, 1936 to May 31, 1938?

Mr. Cahill: I press the objection.
The Court: Sustained.

Mr. Boudin: Your Honor, may I suggest to your Honor——

The Court: Yes?

Mr. Boudin: I would like to suggest that the jury be excused and we discuss further the matter that we had before your Honor.

The Court: Proceed.

Q. Now, the contracts that Local 430 had with other trucking concerns in the period that we have mentioned, were they uniform?

Mr. Cahill: I press the objection. 6830

The Court: Sustained.

Mr. Boudin: Exception.

Mr. Maguire: Exception.

Q. Can you tell us, Mr. Schmehl, how Local 430 in the period that I have mentioned before determined what its requirements and conditions should be?

Mr. Cahill: I press the objection.

The Court: Sustained.

Mr. Maguire: Exception.

Q. Will you state for us, Mr. Schmehl, the names of some of the over-the-road trucking companies operating out of York and vicinity that Local 430 had contracts with in 6831 the period that I have already mentioned?

Mr. Cahill: I press the objection.

The Court: Sustained.

Mr. Maguire: Exception.

The Court: It is now 12 o'clock. We will take a recess for fifteen minutes.

(Short recess.)

6832 *Proceedings.*

(The following proceedings occurred during the recess in chambers:)

Mr. Boudin: I thought we were going to get a ruling on those offers before we put any witnesses on so that we would avoid the actual putting of questions.

The Court: Well, you are right. When you were all in here this morning I said if there was anything further that anybody wanted to say on the subject of the offer of proof, that I would be glad to hear you during the recess in view of the fact that there was some misunderstanding as to where you were
6833 to be heard this morning, and I therefore did not suppose that you would put any witnesses on until we took the recess at 12 o'clock. As long as the witness went on the stand I had decided to let the examination go along.

Mr. Boudin: That is why I suggested, if your Honor please, about the recess.

The Court: No, we recess at 12 o'clock, and now we are in recess, and whatever you want to say about it, I will be glad to hear you.

Mr. Boudin: In order to avoid the actual putting on of witnesses, I would like your Honor to rule now on the offers of proof.

The Court: I will rule right now.

6834 Mr. Boudin: Yes.

The Court: As I understand, the question of competency is not presented in the offer of proof made by the defendants with respect to the several points upon which it is proposed by them, that is, from A to J set forth in the brief, with respect to the situation regarding the early history and development of over-the-road driving of trucks and the simultaneous development of policies in different

regions or localities and the execution of contracts and terms and conditions of such contracts—is that throughout the country or is that limited to any part of the country?

Mr. Boudin: Mr. Maguire would know.

Mr. Maguire: We had in mind the areas that have been mentioned in the trial.

The Court: Note that on the record: With respect to the areas referred to during the trial.

Mr. Maguire: We also include in our tender a general showing.

Mr. Cahill: Throughout the country?

Mr. Maguire: Yes. We make it as a separate 6836
part.

The Court: I hold that such proof under the form of the indictment is neither relevant, material or germane. The question involved here is whether the defendants committed conspiracy in the manner alleged in the indictment. If the Govenment fails to establish that, there is no case. If the Government does establish it, there is no justification for the acts which the Government must rely upon to maintain the crime alleged in the indictments. Now you gentlemen have your exception.

Mr. Boudin: Well, we take exception to that, if your Honor please, and may I ask your Honor to pass on those requests in the form that I presented 6837
it on Saturday? Your Honor has that. It is somewhat different from the form presented by Mr. Maguire.

The Court: Well, I haven't it before me because I delivered it to the reporter on Saturday and I have not as yet received a copy of the minutes. But it seems to me that the ruling I have already made covers it.

Mr. Boudin: Frankly, I did not compare it. That is why I want it in that form.

The Court: I do not think, Mr. Boudin, there is any necessity for me to pass upon those requests seriatim because I have said that I regard that offer of proof as irrelevant and immaterial.

Mr. Boudin: Well, I just wanted to make sure that it is included in the ruling. You can call it 1 to 11 instead of A to J. I do not mean that your Honor should pass upon them seriatim.

The Court: All right. Let the record show that what Mr. Maguire in his brief referred to as paragraphs A to J Mr. Boudin referred to in the offer 6839 of proof presented by him on last Saturday and incorporated in the minutes as 1 to 11, and there may be some difference in the verbiage, but in principle they are substantially the same. Does that cover your point?

Mr. Boudin: Yes. We respectfully except. The ruling is the same and we respectfully except on behalf of all the defendants. When your Honor said this morning if we had anything further to say, I did not know what you meant exactly.

The Court: I thought you might cogitate over Sunday in your mind what was said by Mr. Burling, and that he, on the other hand, might have something to add to what you have said, and I wanted 6840 to give both of you the opportunity, if you wanted to do it, to argue the thing further at 10 o'clock, if there was anything to argue.

(Discussion off the record.)

(The following proceedings were had in the court room:)

(Roll call of the defendants and all were present.)

The Court: Proceed.

Mr. Maguire: In view of the ruling that has been made in chambers by your Honor, I have no further questions of this witness.

The Court: Any cross-examination?

Mr. Cahill: No cross.

The Court: Members of the jury, during the recess counsel for the defendants indicated to me in chambers the proof which they intended to offer along the line of that which was attempted to be brought out from the witness who has just left the witness stand, and they made an offer of proof for 6842
the purpose of the record so that in the event of such a determination in this case that there might be an appeal it will be in the record for the consideration of the appellate court. Without passing upon the competency of such proof in the form in which it was offered, the Court determined that such proof was neither relevant, material or germane under the issues as they are tendered here by the indictment in this case and the pleas of not guilty of the several defendants on trial which raise the issues to be heard and determined. Call your next witness.

HOWARD S. KLEIN, residing at 2101 Liberty Street, 6843
Allentown, Pennsylvania, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Maguire.

Q. Mr. Klein, are you connected with any labor union? A. Yes, sir.

Q. What local? A. 773.

Q. And that union is located in what city? A. Allentown, Pennsylvania.

Q. Can you tell us whether or not in the period December 1, 1936 to May 31, 1938 the Hummel Warehouse Co., Inc., of Allentown had a contract with 773?

Mr. Cahill: I object to it as immaterial.

The Court: He may answer yes or no.

A. No, sir.

Q. Can you tell us whether or not it had a contract? A. No, it didn't have a contract. We tried to get a contract——

6845

Mr. Cahill: I move to strike it out.

The Court: No. Strike out after "No."

Mr. Maguire: That is all.

The Court: Any cross-examination?

Mr. Cahill: No cross.

Mr. Maguire: If your Honor please, the defendant union rests.

Mr. Murray: The individual defendants rest.

Mr. Boudin: I rest for the defendant Cahill.

The Court: All right. Mr. Cahill?

Mr. Cahill: Well, Judge, I think I will need about one hour for such rebuttal proof as I have to offer and I haven't got the witnesses here today. So if

6846

your Honor could give me an hour tomorrow I think I would probably finish within that time.

The Court: Well, can the jurors come in in the morning at 10 o'clock? I would assume that you will be free by 11 o'clock if Mr. Cahill does not require more than that time for his rebuttal testimony, but certainly we can finish in the morning and then I will hear the jury and I will hear the motions of the defendants for dismissal and pass

on those, and that will leave me free to take up the three-judge court case that has been set for tomorrow afternoon, and I will confer with counsel with respect to the period of summation with a view to beginning that on Wednesday morning, and I will advise the jury tomorrow before their departure what the precise hour will be so if possible we can have the summations concluded on Wednesday and the charge of the Court delivered Thursday morning. I would prefer to deliver the charge in the morning and let the jurors have the balance of the day to consider the case, rather than charge late in the afternoon when it might be less convenient. 6848
So you are now excused until 10 o'clock tomorrow morning.

(The jury retired from the court room.)

The Court: The Court stands adjourned until 10 o'clock tomorrow morning.

(Adjourned to Tuesday, May 21, 1940, at 10 A. M.)

New York, May 21, 1940,
10 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and the defendant 6849
Horan was absent.)

(Mr. Murray absent.)

10.25 A. M.

The Court: The jury may retire to the jury room until notified.

(The jury retired from the court room.)

10.30 A. M.

The Court: It is now 10.30 A. M. Will the clerk call the name of John Horan?

The Clerk: John Horan.

(No response.)

The Court: No answer. Mr. Maguire.

(Conference at the bench between the Court and Mr. Maguire.)

The Court: The defendant Deegan is permitted to leave the room with counsel.

6851 10.35 A.M.

(The defendant Horan appeared and conferred at the bench with the Court.)

10.45 A. M.

(Mr. Kirchman of Mr. Murray's office reported to the Court that Mr. Murray left his office at ten minutes to ten and had not been heard from since then.)

The Court: The Court will take a brief recess.

(Short recess.)

6852 11 A. M.

(Mr. Murray entered the court room.)

(The roll of the defendants was called and all were present.)

(The jury returned to the court room.)

Mr. Murray: If your Honor please, I want to apologize for my tardiness and causing this delay, but I was under the impression that your Honor had set the opening of court for 11 o'clock.

The Court: Well, it has been 11 o'clock every day, but I thought I made it clear yesterday that we would convene an hour earlier.

Mr. Murray: I am sorry, Judge.

The Court: So that there would be ample time to consider the motions in view of the fact that I can't sit in this case this afternoon.

Mr. Murray: Yes, your Honor.

The Court: It is all right.

Mr. Murray: Thank you.

The Court: Proceed, Mr. Cahill.

6854

GOVERNMENT'S REBUTTAL PROOFS.

WALTER L. LARKIN, recalled as a witness on behalf of the Government in rebuttal, having been previously duly sworn, further testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Larkin, I show you Government's Exhibit 65 for Identification. I ask you if you produced that from your files? A. I did.

Q. From our files of applications.

6855

Mr. Marks: I offer it in evidence.

Mr. Boudin: If your Honor please, that is objected to on the same ground to which we objected to all these records that the defendants were made to produce.

The Court: Let me see it.

(Paper handed to the Court.)

Mr. Marks: If your Honor please, I am offering only the face side of it.

The Court: Well, as I have heretofore stated, the individual defendants in this case stand in the relation of partners.

Mr. Marks: Yes, sir, but that defendant took the stand.

The Court: And I said this, that any documents which were produced here might be admissible as against the union but not as against the individual defendants. I will sustain the objection.

Mr. Marks: That is all, Mr. Larkin.

Mr. Murray: No questions.

(Witness excused.)

6857

J. STANLEY SEEMAN, 480 Park Avenue, New York City, called as a witness on behalf of the Government in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Seeman, from December 1, 1936 to May 1, 1938, what was your position? A. General manager and director of Seeman Bros., Inc.

Q. Where is that concern located? A. 121 Hudson Street.

Q. What business is Seeman Bros. in? A. Wholesale groceries.

6858 Q. During the same period that I just mentioned did Seeman Bros. have any policy with respect to accepting delivery of merchandise from trucks backed into their platform?

Mr. Murray: I object, if your Honor please.

The Court: Overruled. He may answer yes or no.

Mr. Murray: Exception.

A. Yes.

Q. What was that policy?

Mr. Murray: I object.
The Court: Sustained.

Q. Did Seeman Bros. have any rule during the same period with respect to accepting delivery of merchandise from trucks backed into the platform? A. They would accept——

The Court: No. Just answer the question yes or no.
The Witness: What was the question?
The Court: Repeat it. 6860

Q. (Read.) A. Yes.
Q. What was that rule?

Mr. Murray: I object, if your Honor please.
The Court: Sustained.

Q. Mr. Seeman, there has been testimony in this case to the effect that Seeman Bros. would receive shipments only from out-of-town truckers who had local men on the trucks. Can you tell us whether that was the policy of Seeman Bros.?

Mr. Maguire: Objected to.
The Court: Sustained. 6861

Q. Can you tell us whether or not Seeman Bros. would receive shipments only from out-of-town truckers who had local men on the trucks?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Can you tell us whether or not that was the fact?

Mr. Maguire: Objected to.

The Court: Sustained.

Mr. Cahill: If your Honor please, I would ask permission to argue this point to the Court.

The Court: There isn't anything to argue. I am sustaining the objections because your questions are not properly framed.

Mr. Cahill: Is the objection only to form, your Honor?

6863 Q. Do you know what the policy of Seeman Bros. was from December 1, 1936, to May 31, 1938, with respect to accepting delivery of merchandise from trucks backed into your platform? A. Yes.

Q. Can you tell us now what that policy was?

Mr. Maguire: That is objected to.

The Court: Sustained.

Mr. Cahill: If your Honor please, we do not mean to press questions which are objectionable as to form, but we don't understand what the defect in form is.

The Court: Well, I am not here to reframe the questions for you.

Mr. Cahill: But if your Honor will point out——

6864 The Court: I am an impartial arbitrator to pass upon the relevancy and the competency of evidence.

Mr. Cahill: We are using as closely as we can the form of question that was put to the witness Waskiewicz by Mr. Murray.

The Court: Now, in the first place, counsel referred to testimony. I don't know and I can't tell if the jury knows whose testimony it is, whether it is alleged that the person who used certain words

used them with respect to this witness or with respect to somebody else. Now, to that extent I am indicating to you the weakness of your question. That is one. The other is you haven't shown what knowledge this man has. I may know the policy of Seeman Bros. I may know the policy of Seeman Bros., or say that I do, because somebody up there told me what it was, but that would be purely hearsay.

Mr. Cahill: But the witness has testified to his position in the organization.

The Court: I don't care whether he has——

Mr. Cahill: He says that he is manager, as I 6866
recall the testimony, and that, I take it, is the basis for his knowledge.

The Court: Well, that isn't enough under the rule. You haven't shown that this witness either knows where the platform is or that he has ever been on it, or that he ever saw any trucks backed in there.

By Mr. Marks.

Q. What were your duties as manager of Seeman Bros.?
A. I have numerous duties. I am in executive charge——

The Court: What, if anything, did you have to do with the receipt of merchandise? 6867

The Witness: I had executive charge of the delivering and the receiving of merchandise at Seeman Bros.

The Court: I don't know what "executive duty" means.

The Witness: Well, they follow my instructions entirely. I have full say over the whole matter.

Q. Can you tell us now what your policy was with respect to accepting delivery of merchandise from trucks backed into your place?

Mr. Maguire: I object.

The Court: I sustain the objection.

Q. Did you issue any instructions with respect to accepting delivery of such merchandise?

The Court: He may answer yes or no.

A. Yes.

6869 Q. What instructions did you issue?

Mr. Maguire: Objected to.

The Court: Sustained.

Q. To whom did you——

The Court: Were the instructions in writing or oral?

The Witness: Oral.

Q. To whom did you issue them? A. To the men that are under me and who have charge of the receiving and delivering of merchandise.

6870 Q. Mr. Seeman, the witness Waskiewicz in this case testified on page 2445 of the record that your concern would receive shipments from out-of-town truckers only if there was a local man on the truck. Can you tell us whether you issued any instructions on that subject?

Mr. Maguire: Objected to.

The Court: Will you let me see that, please?

(Transcript of testimony handed to Court.)

The Court: Now let me hear the question.

(Question read.)

The Court: He may answer yes or no.

A. Yes.

Q. To whom? A. To the men directly under me who have charge of the receiving and delivering of merchandise.

The Court: Well, can you give us the names of the persons to whom you issued such instructions?

The Witness: One gentleman's name is William Sivertsen; another, John Frey; Gene McLaughlin and a few others. They are the main ones.

6872

Q. What were those instructions?

Mr. Maguire: That is objected to.

The Court: Sustained.

Q. Have you ever been on the receiving platform of Seeman Bros. yourself? A. Many a time. Every day, a few times a day.

Q. And also during the period from December 1, 1936 to May 31, 1938? A. Yes, sir.

Q. Have you ever seen a truck turn away from your platform with merchandise consigned for your concern?

Mr. Maguire: That is objected to; not binding on the defendant. 6873

The Court: I will allow him to answer yes or no.

A. Read the question.

Q. (Read.) A. No.

Q. Can you tell us whether or not you accepted merchandise at your platform from any truck backed in there with merchandise consigned to Seeman Bros.?

Mr. Maguire: I object to the question.
The Court: I will allow that.
Mr. Maguire: Exception.

A. Sorry; will you read the question?
Q. (Read.) A. We accepted everything that was consigned to Seeman Bros.

The Court: That came to the platform?
The Witness: Right.

Q. Can you tell us whether or not that was true irrespective of whether there was a local union man on the
6875 truck?

Mr. Maguire: That is objected to.
The Court: Sustained.

Q. Can you tell us whether or not you accepted delivery at your platform from trucks that were manned by over-the-road drivers?

Mr. Maguire: That is objected to.
The Court: Sustained.
Mr. Marks: That is all.
Mr. Maguire: No questions.
Mr. Marks: May we have a moment, your Honor?
6876 The Court: You mean before excusing this witness?
Mr. Marks: No, before calling the next one.
The Court: Yes.
(Witness excused.)
(Conference between Government counsel.)

FRANCIS L. WHITMARSH, residing at 1220 Park Avenue, New York City, called as a witness on behalf of the Government in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Whitmarsh, from December 1, 1936 to May 31, 1938, what was your position? A. President.

Q. Of what? A. Of Francis H. Leggett & Company.

Q. Where was that concern located? A. 27th Street and Hudson River, New York City.

Q. What is the nature of the business of Francis H. Leggett? A. Wholesale grocery. 6878

Q. Do you know whether or not during the period I just mentioned Francis H. Leggett & Company had any policy with respect to accepting delivery of merchandise from trucks backed into your platform? A. We would accept any——

Mr. Maguire: I move that it be stricken out.

The Court: Strike it out. The answer is yes or no.

Q. Yes or no? A. Yes.

Q. What were your duties as president? A. To supervise the policies of the company.

Q. And did that include the policy with respect to 6879 accepting delivery of merchandise from trucks backed into your platform? A. Yes.

Q. What was the policy of Francis H. Leggett & Company during the period I have mentioned——

The Court: Sustained.

Mr. Marks: That is all.

Mr. Murray: No questions.

(Witness excused.)

6880 *Arthur P. Williams—For Government—Direct.*

ARTHUR P. WILLIAMS, residing at 322 Central Park West, called as a witness on behalf of the Government in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Williams, what was your position from December 1, 1936 to May 31, 1938? A. President of R. C. Williams & Company.

Q. What business was R. C. Williams & Company in? A. Food distribution and liquor.

Q. Where was their plant or warehouse located? A. Tenth Avenue, 25th and 26th Streets.

6881

Q. What were your duties as president? A. I superintended merchandising; sales and merchandising.

Q. Now, do you know whether R. C. Williams during the period I have just mentioned had any policy with respect to accepting delivery of merchandise from trucks backed into your platform? A. We would——

The Court: No, no. Just answer yes or no.

Q. Yes or no? A. Yes.

Q. What was that policy?

Mr. Maguire: That is objected to.

The Court: Sustained.

6882 Mr. Marks: That is all.

(Witness excused.)

THOMAS F. MCCARTHY, residing at 184 Kent Avenue, Brooklyn, called as a witness on behalf of the Government in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. McCarthy, what was your position from December 1, 1936 to May 31, 1938? A. President, Austin, Nichols & Company.

Q. During that period what was the business of Austin, Nichols & Company? A. Grocery, beer, wine and liquor.

Q. Where was the warehouse located? A. 184 Kent Avenue, Brooklyn.

6884

Q. What were your duties as president? A. The general policy forming of the business, operation—conduct of the business.

Q. Do you know whether during the period I have mentioned Austin, Nichols & Company had any policy with respect to accepting delivery of merchandise from trucks backed into your platform? Yes or no. A. Yes.

Q. What was that policy?

Mr. Maguire: That is objected to.

The Court: Sustained.

Mr. Marks: That is all.

Mr. Murray: No questions.

(Witness excused.)

6885

Mr. Cahill: The Government rests.

The Court: Sur-rebuttal?

Mr. Murray: The individual defendants rest, if your Honor please.

Mr. Maguire: The union rests.

Mr. Boudin: All the defendants rest.

The Court: Does that include the defendant Cahill?

Mr. Boudin: Yes, if your Honor please.

The Court: I will excuse the jury until tomorrow morning at 10 o'clock. So there won't be any misunderstanding on the part of anyone, 10 o'clock means 10 o'clock. It may be necessary for me to take a five minute interruption at 11 o'clock in order to dispose of an advertised hearing here in a 77B proceeding. Maybe defendants' counsel engaged in summation at that time will welcome the brief respite. We will allow four hours of summation to counsel for the defendants, to be divided among them as they may separately agree, and the prosecution may have three hours
6887 in response to that, or so much thereof as they choose to use. Then we will take an adjournment at the conclusion of the summations until the following morning for the purpose of the charge to the jury.

The jury are now excused for the balance of the day. The Court remains in session.

(The jury left the court room.)

The Court: I will now hear motions.

Mr. Cahill: The Government moves to dismiss as to the defendant Katz.

The Court: Motion granted.

Mr. Murray: If your Honor please, on behalf of the remaining defendants, with the exception of the defendant Union and the defendant Cahill, I move that your Honor
6888 direct a verdict in behalf of all these defendants on the ground that the Government has failed to make out a case and has failed to prove and sustain the allegations in the indictment by a credible degree of proof beyond a reasonable doubt. Then I particularly move for a dismissal on the ground that, while the Government has pleaded and attempted to prove one general conspiracy, it has failed in that respect, and that the Government has offered evidence of alleged independent separate conspiracies among various groups of the defendants and that there has been

no unity in proof which would make it possible to submit to the jury a general conspiracy against all the defendants.

The Court: The motion for a direction of a verdict is denied. The motion to dismiss based upon the fact there isn't one conspiracy denied.

Mr. Murray: Defendants respectfully except.

Mr. Boudin: If your Honor please, I move to dismiss and for a direction of a verdict on behalf of the defendant Cahill on the grounds stated by me at the conclusion of the Government's case, and in this connection I would like to call your Honor's attention to the fact that there are no charges or allegations of any violence or threats of violence by the defendant Cahill and therefore the charge 6890
in the anti-racketeering indictment has not been sustained. I don't know whether your Honor recalls that testimony, but, just to remind your Honor, the testimony is that Cahill came into the employ of the B & B after B & B had entered into a contract with the union, and the only difficulty at any time with his employer was over the question of discharge because of damage to a truck. Cahill said that was an accident and there is no testimony that it wasn't an accident. That was a charge of negligence. That difficulty had been straightened out and a telegram was specifically sent by his employer to Cahill and the union telling them to disregard his previous telegram about the discharge.

The only other witness who mentioned Cahill was the 6891
witness Spackman, who specifically said he had no business with him prior to June 1—that was during the period of the indictment—and that he did employ him after and there was no complaint about him. In fact, he was particularly careful to point out that he had no complaint against Cahill.

Another witness by the name of Bernot, who had worked for B & B Transportation before they entered into an agreement, the agreement being made on January 27, 1938,

testified that in the fall of 1937 Cahill had worked for him but there was no suggestion of threat of violence, and that Cahill was taking care of two trucks for his day's pay and it was perfectly satisfactory to him. If your Honor is interested, I can call your Honor's attention to the page where he so stated, that when he discussed it with him Cahill told him what the terms were and he said it was all right with him and at no time was there any suggestion by any witness of any threat or violence on the part of Cahill. Clearly, therefore, there is no evidence concerning any of the four counts of the anti-racketeering indictment and there is no proof under the anti-trust
6893 indictment. In this connection I will ask your Honor to please recall the statement by Mr. Cahill and the Government attorneys that they relied only on that kind of testimony under the anti-trust act which would also support a conviction under the anti-racketeering act.

Now, in connection with the union, we also renew the motion on the same grounds that we made at the conclusion of the Government's case, and I call your Honor's attention further to a new ground which is somewhat technical, but I think it is good enough to be urged, and that is a misdescription of the union. I think in Section 5 of the anti-trust indictment your Honor will find a description of the defendant; Local 807 is described as a national association under the laws of the State of New York. There is
6894 no such proof in the case and, so far as the laws of the State of New York are concerned, it is not an incorporated association and certainly it is not a national association. The proof is to the contrary. I haven't had a chance to look at the description under the anti-racketeering indictment. I think it is the same description in the anti-racketeering indictment. It may be a different paragraph. Mr. Maguire tells me that the description is the same.

The Court: I read it. I saw it this morning while I was waiting for the trial to begin. I just read it again.

Mr. Boudin: Now, on the general problem I do not care to repeat everything I said at the time I made motions originally at the close of the Government's case, but I would like to say that everything that has been put in evidence since then only emphasizes the points that we made then, and particularly the fact that the union was anxious that these men should give an honest day's work for what it considered an honest day's pay. The indictment under the anti-trust act is based, according to the Government's theory, on the same kind of acts that would support the anti-racketeering indictment. The question whether or not the union was entitled to enforce a rule whereby its men would be employed at $9.42 a day is out of the 6896
question or is out of this case, the Government having limited itself to the means, and this Court is bound by that theory because of certain rulings with respect to offers of proof. It seems to me that clearly the Government has not sustained the allegations of the indictment with respect to the union. Here is a union which attempted to bring order out of chaos in an industry; it attempted to establish a certain daily wage; it attempted to procure employment for its members; that is all that can be charged against it. It certainly did not order these men to engage in violence or depart from the terms of the contract. On the contrary, everything that has been put in evidence since the close of the Government's case on the cross-examination of the defendants that were called on the 6897
witness stand or the witnesses for the defendants emphasized the fact that the union was anxious to obtain contracts, that it had contracts with most of the over-the-road employers, who were apparently working under them satisfactorily; therefore if there was any sporadic case of violence or threats of violence—it seems to me there were very few of them proved altogether in this case—it was certainly not a concerted action that the union had

ordered or which could be imputed to the union. There is certainly no proof that it was ordered by the union and no proof of condonement or approval by the union, and everything that does appear in evidence indicates a policy on the part of the union to discourage individual action and an attempt on the part of the union and an endeavor on the part of the union to have everybody come in and work under a standard contract. In this connection I would like to call your Honor's attention to the last piece of evidence which was put in by the Government on the cross-examination of the defendant George Needelmann which seems to me significant. Whatever the implications
6899 may be as to individual defendants in that testimony, it clearly shows that it was recognized by all that the union wanted them to make contracts which would give the employer an eight-hour work day for $9.42 under one kind of contract and $8.41 on another kind of contract, and the charge in the indictment, namely, that the union was attempting to get $9.42 from one class of trucks and $8.41 from another class of trucks is directly contradicted by the evidence that whenever contracts were entered into two or more trucks were unloaded for the same pay.

I would like to stress particularly this point: There is a very serious variance in this regard aside from the general lack of evidence; there is a variance between the allegations of the indictment, in both indictments, and the proof. The indictments, as I read them, allege that there
6900 was an attempt to levy a certain amount on trucks. Your Honor will recall the letter of George Needelmann to his employer, whatever his name was, saying if he didn't have a contract with the union and his trucks were caught, as he put it, they would have to pay so much per truck for unloading, but that all this could be avoided if he made a contract with the union whereby the union man would give an eight-hour day work irrespective of the number of trucks. That is the way I read that exhibit which

was put in evidence by the Government. That is the only way I can read it. That is supported by every bit of evidence in the case. It is therefore clear to me that there is a variance; but, aside from variance, in substance the evidence, if anything, clearly disproves the existence of a general conspiracy among all the members of the union. As pointed out by Mr. Murray in his argument, the indictment cannot be sustained by the proof of a series of separate little conspiracies. The case proves that there was no conspiracy of any kind. Whatever acts there were, if there were any, I wouldn't call them violence; I don't think there was any violence proved. There may have been something that sounds like intimidation, but it was only 6902
on the part of individuals and therefore could not be a part of a conspiracy. Your Honor has ruled correctly that a labor union, an unincorporated association, is really a partnership.

The Court: That is not quite what I said. I didn't say that a labor union was a partnership. I said that the members of the union were in the relation of partners to each other.

Mr. Boudin: Well, I have taken a shortcut, your Honor.

The Court: Well, I don't want to have you under any misapprehension, because I think there are certain elements of a union that are analogous to a corporation.

Mr. Boudin: Yes. It has a common treasurer.

The Court: I don't want to be misunderstood as having 6903
said something that I might have to disabuse your mind of in the charge.

Mr. Boudin: Well, I think your Honor is perhaps more exact than I am, although certain authorities have referred to it as a partnership. I won't go into that.

The Court: For certain purposes it may be, and for others it may not.

Mr. Boudin: The point I want to make to your Honor is that I believe in this case as in cases which may be

brought—civil suits which may be brought under the General Association Law: they can only be held collectively for a collective action; that is, an action to which all of the members of the association are parties either directly or by reason of having entrusted authority to somebody by whose authority the acts were committed. Now, there is no such evidence in this case. There is no evidence that the union had approved of these things at any general membership meeting. There is no proof that its board or committee had approved it. There is no proof that the defendants ever authorized or approved of it. So that even aside from the Norris-LaGuardia Act, or the provi-
6905 sions of that act, there is no proof against Local 807.

The specific provision of the Norris-LaGuardia Act deals with evidence in criminal cases, with respect to authority. Clearly there is a lack of proof as against the local union as such. I think it can be honestly and truthfully said that the proof is directly to the contrary.

Mr. Maguire: If your Honor please, may I make a statement in order to have the record clear and to make sure that the record is as I think it is, and that is that in behalf of all of the defendants the motions made at the close of the Government's case have been renewed on all the grounds urged then in behalf of all the defendants. Similarly, the motions are made at the conclusion of the case in behalf of the defendants.

6906 The Court: Yes. In order to further clarify the record, the motions heretofore made at the close of the Government's case and then denied and now renewed are now denied.

Mr. Maguire: Exception.

The Court: The motions made in behalf of the defendant Cahill are severally denied.

Mr. Boudin: Exception.

The Court: The motions made now on behalf of the union are severally denied.

Mr. Maguire: Exception.

The Court: I have heretofore referred to the rule of this Court which requires that requests to charge be presented to the Court before the summations begin, and I will be glad to have the requests as early as counsel may be prepared to submit them, but certainly before the trial is resumed at 10 o'clock tomorrow morning, to which hour we now adjourn.

(Adjourned to Wednesday, May 22, 1940, at 10 o'clock A. M.)

6908

New York, May 22, 1940,
10 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.)

(Conference at the bench between Court and Mr. Boudin.)

(Conference at the bench between Court and Mr. Murray.)

The Court: Members of the jury, since you were here yesterday motions were made and heard for a dismissal of both indictments. Both indictments have been dismissed as against the defendant Katz. The motions with 6909
respect to the other defendants were denied and I repeat now what I said at the close of the Government's case that the fact of the denial of those motions is not to be taken by you as an indication that the Court has any opinion upon the guilt or innocence of the defendant, but that the Court believes as a matter of law that there are questions of fact to be submitted to you for your determination

and that the guilt or innocence of those defendants who now remain on trial is for the determination of the jury by its verdict.

Who will start the summations for the defendants?

Mr. Murray: I will start, if your Honor please.

SUMMATION OF MR. MURRAY.

Mr. Murray: With your Honor's permission, Mr. Foreman and Ladies and Gentlemen of the Jury, we are about near the end of the trail. I know that everyone is happy
6911 because we are. This case I know must have been a heavy burden to you members of the jury because there have been so many witnesses, so many exhibits and so much testimony covering thousands of pages. If it is any comfort to you, I will say that my allotment of time to plead for my clients with you has been limited to two hours. I may be less, I may be a little more, but if you can stand it I will try to, and I want to thank you now at the outset for the patience and forbearance and the attention that you have given to this case, because it is a serious case and to me it is more or less of a strange case, because in my years practicing law—perhaps too long—it is the strangest case that has ever confronted me, because I have seen prosecutions where men were indicted, charged with
6912 crime and prosecuted because they were bad, because they were bad citizens, because they committed crimes that touched society itself; but this is the first time in my experience that I have ever had to stand up before a jury and plead for men because they wanted jobs.

I don't have to admonish you, because I can't give you the law, I know you have your conscience and your judgment to guide you, but yet I want to say to you that in this case it certainly is a grave responsibility that rests

on your shoulders. I didn't make the law; I didn't make the anti-racketeering statute. I didn't make the Sherman statute. I didn't make the principles of law and I can't give them to you, and if I do just refer to them in passing it is not because I want to usurp the function of the Court but just to guide you as far as I may be permitted in respect to the law.

We are a government of laws in this country. There are principles that as citizens we must follow and there are principles of law that we are bound by, and our attitude toward the law is entirely different from what it is in other countries where if you have a grudge against a citizen and where if you don't like his attitude toward 6914
life or the government you can take him out and hang him to a lamp post without any process of law; but here, ladies and gentlemen, we follow the doctrine of reasonable doubt and presumption of innocence. His Honor will tell you what those two doctrines in the law mean, but I say to you that they are like torchbearers with a light guiding your deliberations from the moment you leave your jury box to file in on your sacred and solemn deliberations in your jury room where you are going to decide the fate—yes, the fate—and the future of those working men who have sat here now for so many weeks and at whose faces you have looked for so many weeks.

You have here and you have been deluged with testimony, and you have seen an army of witnesses and you have lis- 6915
tened to them, and you have had them from High Point, North Carolina, and from Shelton, Connecticut, and from Salem, New Jersey, and from Roslindale, Massachusetts, and from Bound Brook, New Jersey, and from Buffalo, New York, and from Vineland, New Jersey, and from Phillipsburg, New Jersey, and from Bridgeton, New Jersey, and from Swedesboro, New Jersey, and from Woodhaven, New Jersey, and from Terryville, Connecticut, and

Bridgeport and Norwalk and Georgetown, Connecticut, and from Biglerville, Pennsylvania, and from Baltimore, Maryland, and from Allentown, Pennsylvania, and last, but not least, from Mullica Hill, New Jersey.

Perhaps I am mistaken, but my memory fails me if I heard a single word of complaint from a native New Yorker. And my memory fails me if I heard a single word of complaint from concerns that made New York industrially possible, and that includes R. C. Williams and Seeman Bros. and Leggett's and other big concerns in this community, native New Yorkers the same as you and I; and yet, if they had any complaint concerning the activi-
6917 ties of those men who were looking for work, I have not heard it.

I am an humble lawyer, as I say, practicing law perhaps too long. I am opposed by the learned gentlemen that hold portfolio from the Government of the United States, and yet, while I or my associates hold no title from anybody, it is our duty and privilege to plead with you ladies and gentlemen of the jury for a cause that I think is just and that I know my associates think is just, just the same as it is the privilege of the Government to plead against us and ask for a conviction in this case.

You have heard, and sometimes it seems impressive you have heard the term "Government" used in relation to the prosecution in this case. Now, we all respect and
6918 revere the Government. We are in a criminal prosecution, ladies and gentlemen of the jury. The term "Government" is not magic. Of course, it is the Government and it is the United States of America against these defendants, but that is only a title, because those men who sat against that wall for so long as defendants in this case, they are part of the United States of America just the same as the gentlemen that came from North Carolina and Connecticut and Massachusetts and New Jersey to complain here; so

there is no magic in the term "Government" because it is these men's Government just the same as it is anyone else's Government. And if witnesses who have been called by the Government elect to complain about these defendants your duty is to hear them, and your solemn and sacred duty is to weigh their testimony and with no one but God and your conscience as your guide to honestly decide whether or not these men have committed a crime beyond a reasonable doubt. But these men, humble as they are, merit your consideration because they are part of the Government, and they merit, I say to you, the most scrutinizing judgment that you can give to this case.

You cannot charge men with a crime and not consider 6920
that every individual in that case is a human being with his liberty at stake. And you cannot, because there is a conspiracy charged here, find a mass conviction against those men. I have said to you that I did not make the law and I did not make the law of conspiracy, but I think I am privileged to say a word about the attitude of some lawyers and jurors about the charge of conspiracy.

Conspiracy, if I remember my history, came down from the old Star Chamber of England, and, like many other things that came down from the English law, it retained some of its good features and, it seems to me, also some of its bad features.

If you want to get hunk with an enemy and if you want to crush him and destroy him, it seems to me that the 6921
easiest and simplest and most effective way to do it is to put him into a conspiracy charge. Human beings always have enemies, whether they be over-the-road truckers or someone else. And if those enemies want to get even with us and they get us into a conspiracy charge, then it is just too bad.

The rule, as his Honor will lay down—as I say, I am not trespassing upon the domain of this eminent jurist who has presided here so fairly and so considerately to

everyone in this case from jury to defendant. He will give you the law. But did you ever think that when his Honor gives you the law of conspiracy, that he will tell you that no matter when a defendant came into a conspiracy, whether it were at the very beginning or an hour before the end, and he did anything in the furtherance of that conspiracy, he is just as guilty as a man that has been in that conspiracy for seventeen or eighteen months? And if someone who is charged, and ought to be charged, I say, with an isolated crime, has a fist fight with someone concerning which twenty-five men on trial never knew anything about and had no part or parcel in and never
6923 heard of, yet you may be privileged to infer that in an isolated case like that, if the acts were judged to be in furtherance of the conspiracy, every man in this conspiracy charge, who had nothing to do with it, is chargeable with it.

If, for instance, Edward Weinheimer went up to 25th or 26th Street and he got into a personal controversy with a colored man named Brown and they both lost their tempers and Eddie Weinheimer got hit on the nose with a bale hook held in the hand of Brown, and if afterwards other men came on the scene and carried this personal grudge or quarrel a little further, in which the colored man was beaten, do you think as a matter of justice it is right to attribute that personal quarrel between Ed Weinheimer and this colored man Brown to every man that sits
6924 there against that wall?

Supposing Austin Furey, one of the defendants in this case, when Goddard from the Brookline Transportation Company said "Well, Brown, the colored man, has been beaten up"—and I do not grant that Austin Furey ever said such a thing, but supposing he said, "It is too damn bad he didn't get murdered"—now, is it fair to take the other twenty-five or twenty-six men in this case and say that because Austin Furey did not give a damn whether the colored man got beaten or that he ought to be mur-

dered, that every man that sits here must be bound by what Goddard says Furey said? Do you think that is fair? And yet, as I understand and as I understand his Honor will tell you, that if Austin Furey said——

The Court: One moment, Mr. Murray. I do not know how you can understand what I will tell them because I have not told anybody what I will tell them.

Mr. Murray: Well, Judge, I am just guessing.

The Court: Let us have the record show that, then, because I do not want it to appear it has been disclosed.

Mr. Murray: Well, as I say, I do not know what his Honor is going to say to you, but I am just giving you a general principle of law that I believe applies to con- 6926
spiracy. Supposing his Honor said to you that every act, declaration, of individual defendants, if it is in furtherance of a conspiracy, binds all? Well, do you think it is fair to assume that if Austin Furey in a temper told Goddard that it is too damn bad that the colored man wasn't killed, that you are going to charge every other man sitting there against that wall with that?

And you know there are men, from the evidence in this case, who never met each other. At least, there is no evidence that they ever met each other from December 1, 1936, until June, 1938, which is the time that the Government charges that this conspiracy existed, or, at least, for which they prosecute. Now, you know the evi-
dence is silent as to whether or not they ever met each 6927
other, ever had a conversation with each other, or whether or not they acquiesced in or ratified any of those criminal acts that the Government charges against the rest of the men.

I am citing those illustrations to show you how, in my opinion, the law of conspiracy can be harsh, a burden to defendants who are not even mentioned in a prosecution, and to show you how difficult it is for a man who never

said anything, never heard anything, never did anything to disprove that he had any connection with it.

If the Government relies on the proposition that they have connected all these men with the declarations and the acts in furtherance of the conspiracy, I say to you ladies and gentlemen that in my opinion they have miserably failed.

The Government's case is as good as their witnesses, and the fact that a witness is called by the Government, with the magic name "Government" or with the "United States of America" as the prosecutor, does not put a halo around that witness' head. And when it comes your time
6929 to consider this case you will probably have an opportunity to decide whether or not Government witnesses and defendants alike were interested witnesses. I say to you that in my opinion every man called for the prosecution, just the same as every man called for the defendants, were interested witnesses. The over-the-road drivers from these places I have mentioned testifying, maybe, to curry favor with their employer and keep his job. In my opinion the over-the-road truckers, the employers, so testifying, maybe, with the purpose in view that that would be the end of Local 807, the union.

My contention is that there was no united, a common plan and purpose on the part of these defendants to commit the crime of conspiracy. There were harsh words used
6930 at times. There may have been fist fights at times, there may have been controversies at times, but if there were any violation of the law I say to you and I urge it in behalf of the defendants that it was a violation of a State law and not a violation of a Government law which results in the prosecution for conspiracy.

When the Government started out and I listened to excerpts from the indictment being read and I heard the learned prosecutor outline to this jury what he claims were offenses against the Government that constituted this

crime of conspiracy I know that as you listened you thought it was a pretty serious proposition. Now, ladies and gentlemen of the jury, when any prosecution makes a promise of proof it gives your ladies and gentlemen of the jury a promissory note, and if by evidence it doesn't make payment on that promissory note, then it defaults in its proof, and I say to you that the verdict belongs to the defendants in that situation.

Just to consider for a moment some of the things that the learned prosecutor told you at the opening of this case, and I remember, too, particularly, because when I listened to them they sounded very impressive and I have no doubt they sounded very impressive to you ladies and 6932
gentlemen of the jury, and what did he say? He said that he was going to prove, or, at least, the indictment charged, that these men collected $1,000,000 from over-the-road truckers; and I remember it quite clearly because he said, "And remember," he said, "millions with an 'M'" Subsequently he went on to say, "And there was a billion dollars worth involved on the part of the over-the-road truckers in this prosecution."

Well, ladies and gentlemen, when the proof crystallized and when you got the last word in this case it seems to me that the "M" representing the millions and the "B" representing the billion sunk into such insignificance that it didn't even amount to a dollar. Mark you, that was the promise of the Government at the start of this case, 6933
to prove that that was true. Then I heard something about extortion of thousands of dollars and extortion of a hundred thousand dollars in this case, and I sat here patiently all these weeks waiting for the evidence and there wasn't a single word in this entire record where it was claimed that one of these men demanded or exacted tribute from anyone connected with the over-the-road trucking business except when they were looking for employment and wanted to work for their money, and the evidence in this case is

repeatedly out of the mouths of the Government witnesses when these defendants were asked whether they wouldn't take money, such as the $500 transaction in the Times Square Hotel, where the defendants testified there were offers made to them of what might be considered mildly bribes, that that that sugestion was repudiated and that every man who sits against that wall said, "I am interested in the union," in effect; "I am bound by the union and I am not looking for money for myself." Now, that is the evidence in this case, and again I say to you ladies and gentlemen of the jury that the Government defaulted in the promissory note that they gave you in respect to that

6935 character of evidence.

I heard other harsh terms, too, of course, at the outset of the case coming from the learned prosecutor who represents the Government that seemed to me poison to these defendants, and if it were proved it certainly would be very, very heavy evidence against them in your minds when you got into your jury room to deliberate. I remember, and I think I am correct, that it was promised to you that it would be proved that those men were gangsters and racketeers, or, rather, that gangsters and racketeers were employed by this union for the purpose of committing acts of conspiracy against the over-the-road truckers and their employees.

Ladies and gentlemen, of the defendants who took the

6936 stand did you see any evidence of their being gangsters and gorillas? In the cases of the men who didn't take the stand and after almost a month of evidence on the part of the Government did you hear one scintilla of evidence that showed that those men were gangsters and gorillas? I say to you ladies and gentlemen that there is no evidence of that here and I say to you that it is not the truth.

What have we got? Gangsters and gorillas? Every man who took the stand was a member of the union and

there is no evidence about the men who didn't take the stand to indicate that they were not bona fide members of a bona fide labor organization that had existed in this community for decades. Gorillas, gangsters and criminals? It seems to me that in spite of the failure of the Government to sustain its accusation here about gangsters and gorillas, that those men can't be convicted, nor a solitary one of them convicted, unless there is proof that they are gangsters and gorillas. Every man who took the stand, and there is no evidence to the contrary concerning those who didn't take the witness stand, was a member of this union. I think the evidence is that they were for almost two years before June 1, 1938; and many of them for years 6938
longer.

These men, of course, are rough-and-ready men. How could you be otherwise and drive a ten or fifteen-ton truck? How would you be able if you were not rough-and-ready to juggle heavy machinery? They don't speak the parlance, of course, of Park Avenue society. They probably never played bridge under the pink glow of a bridge lamp in a Park Avenue home or club, they probably were never in the Waldorf-Astoria or a kindred hotel unless trucking freight to the freight entrance. Perhaps at times their language was harsh. You know they didn't learn the Queen's English listening to the depth of tones of some professor of theology in a seminary. You know that; but I say to you that that is the type of man sitting right 6939
there, that is the type of man that can drive machines in a war and they can take it, rough-and-ready as they are.

Now, I said to you before that I have frequently stood in court in defense of men because it was charged that they were bad. Now, what is bad about these men? Men, again I say to you, looking for a living and nothing else. Now, for instance, suppose one of those men went out in the morning looking for a day's work and he meets an over the road truck driver and he says to him, "You got

to put a local 807 man on your truck," and I grant you and I conclude that the Government's witnesses put just as angry a feature on the conversations as they could. Well, if one of those men said, "You got to put an 807 man on the truck," that was his manner of expression. Was there anything criminal about that? As I said, men are prosecuted because they are bad; men that commit crimes such as larceny, burglary, taking your property—they are bad. Do you find any of those men among those defendants who have taken this stand? Do you find any evidence that a solitary man who sits there who didn't take the stand was that character of man? Now, you may
6941 say, "Well, over-the-road truckers have their rights and their drivers have their rights." I grant you that; but if these men try to unionize over-the-road truckers and their drivers and if they try to get employment for themselves, is that in itself a crime? You must remember and you probably will remember the difficulty in getting employment in this community since 1929, and if these men congregated down near the Holland Tunnel where there were houses or up at 25th Street or over in Brooklyn where there was employment for men, do you call that a riotous assembly? They were out looking for work. Now, I say to you ladies and gentlemen of the jury thieves and criminals don't get up at 6 o'clock in the morning to go out and look for work. Thieves and criminals are not on the
6942 job from 6 o'clock in the morning until 5 in the afternoon and sometimes until midnight. There is an easier way for crooks and thieves and gorillas and gangsters, and you know it, to make a living in this community. The crook works under the glow of secrecy; he is shrewd. Do you know any crooks or criminals that get up at 6 o'clock in the morning to go out to look for work, who presented a union book with the number of his union on it, with his name on it, with a complete identification on it, who was out to commit a criminal act?

Anything those men did, ladies and gentlemen of this jury, they did for work. Do you know of any crooks or criminals who are invited on the telephone to come down to the Bureau of Criminal Investigation of this Government, in this very building, invited by telephone and who voluntarily and unescorted come down here and sit down and talk with an F.B.I. man? Primarily, as I see it, he urges that he was out to get work. Well, do crooks and thieves operate in that fashion? Do gangsters and gorillas operate in that fashion, in that manner? You know that they don't. These men, I say again, were looking for work, and you know that gangsters and criminals, properly so called, don't go out with grimy hands and grimy fingernails 6944
and calloused hands. You know that criminals and gangsters and gorillas don't go out and juggle heavy machinery and you know that a gangster or a gorilla or a criminal doesn't conduct himself in that fashion in an effort to get money. Those men, as I say, were trying to earn a living. First of all, they were trying to get employment, because employment brought money; but it was absolutely necessary for some of those men to try to get work.

You have heard the term "shaping." The evidence is that some of these men went to points where there was trucking and where there was some chance of getting a day's work. What did they do? They did what undoubtedly you have seen men do on the piers of this great city. You have seen men when a ship came into port; longshoremen 6945
were required to load or unload its cargo. In this case men stand there at that point looking for work. They were doing what is called in the parlance of the working man "shaping." Well, now, that is what these men did. They shaped. They told you they shaped. They told you that they went where they thought there was a reasonable expectation of getting work and they stood there looking for work, and the evidence in this case is that repeatedly

these men were accosted by over-the-road drivers and sometimes by their employers and they were given work.

Now, because many of these defendants went to points where they could get work, I ask you in all fairness whether or not you think that is an act in furtherance of a conspiracy and whether or not you think that those men who went to points that I have spoken of to look for work, that that act should be charged to every man in this case? Now, where else would a family man go to look for work except where he thought he could find it? A truck driver certainly can't get work by sitting in the nave of a cathedral, can he? So he has to go where the work is.

6947 Out of all this testimony here and out of the promises made by the Government at the outset of this case that they were going to prove acts of violence, serious acts of violence, on the part of these men who were on trial you know that in the sixteen or seventeen months when this conspiracy is supposed to have existed with these rough men that there were so few acts of violence as to be inconsequential. There was one serious bodily assault, and that was supposed to have been in that episode between Brown, the colored man, and Eddie Weinheimer, testified to by Mr. Goddard. A personal quarrel. Maybe a grudge; I don't know. And I was unable in the cross-examination of Mr. Goddard to find out who was the assailant and who was right and who was wrong in that controversy. Goddard didn't say how Eddie Weinheimer got struck in the
6948 nose. Perhaps from where you sat, you could see the scar on his nose. He says that men came afterward and beat him. Well, now, that is the one consequential act of violence in this case, and I say to you, ladies and gentlemen of the jury, that that was no more a part and parcel of a conspiracy than anything else you can conceive of now, because you may well infer from the evidence that Eddie Weinheimer was right in that encounter and that Eddie Weinheimer and this colored man had a fight. Are you

going to charge all the other men in this case with that episode? Are you going to say that that was in furtherance of a conspiracy?

And outside of that there was one other episode testified to here by an over-the-road driver who said Bob Dillon claimed overtime. If Bob Dillon had a controversy with the over-the-road truck driver about his compensation and that over-the-road truck driver says that Bob Dillon tried to get money from him and tore his pants—now, if there were an argument between Bob Dillon and the over-the-road truck driver can you in conscience find that that was an act in furtherance of a conspiracy that ought to be charged to all those other defendants in this case who 6950
probably never heard of it?

There was testimony in the case—I think it was the man from North Carolina—that when he tried to get his trucks out that he pulled a sliding door down, or something. Now, supposing some of the men did that—and I do not grant that they did that—but supposing they did that, is that an act chargeable to every other man who sits here? You know mighty well from the testimony in the case or, rather, from the lack of testimony, that there is no evidence that the other men knew that that happened; and you know there is no evidence to show that it was either procured by the other men, ratified by the other men or even known to the other men. So is that an act of conspiracy to be charged against all these men?

There was evidence in this case on the question of vio- 6951
lence: There was one incident where Martin, who is still working for that concern, had a fight or, at least, had an argument with Buglio who drove for the Buglio Trucking Company in New Jersey. Buglio says he threw Martin off the truck; that Austin Furey arrived on the scene, that Furey said something about smacking him or hitting him. Angry words. What happened? Nothing. If Martin,

who is not among those defendants, and who is still driving for the Buglio Trucking Company, was guiltless in that episode—and I take it he was guiltless because he is not among these defendants—how is it that Austin Furey can be charged in that instance with saying or doing something that furthers the conspiracy in this case?

And so often you found, despite the harsh aspect that was put on by the Government and from witnesses as to the conduct of these defendants, what did the cross-examination of Buglio, the driver from New Jersey, disclose? He had an argument with Martin, and they are the best of friends, and they are working together every day, and
6953 they go out and they eat together. And you have had testimony from other witnesses in this case to the effect that these Local 807 men who worked with members of that union were friendly. Strange as it may seem, the Government probably claims that acts and conduct such as I described are acts and conduct in furtherance of a conspiracy; and yet the very drivers who are brought here to testify by the Government say it is all right with them.

There was evidence in this case from Mr. Goddard, and probably you remember it back early in the trial, Goddard from the Brookline Transportation Company, that he met John Weinheimer up around 24th or 25th or 26th Street and Eleventh Avenue, and he says that John Weinheimer struck him and beat him. Well, now, if John Weinheimer
6954 did that without any justification on his part, and if Goddard did nothing whatever to motivate John Weinheimer in striking him—and I don't grant that that is so because John Weinheimer told you on the witness stand his version of that situation—now, if that were true and there were angry words and blows exchanged between Goddard and John Weinheimer, do you think that is fair to take conduct of that sort and consider that it is an act in furtherance of a conspiracy, of a general conspiracy—which

may be attributed to every man in this case? I say to you that I do not think it is fair to do that.

Outside of those acts of violence that I have just spoken of, if they were acts of violence, if they were unjustifiable on the part of any of these union men, I submit to you that every other man in this case should not be charged with those acts as evidence showing a general conspiracy among them all.

At the outset, when I heard the Government's opening, when I heard the charges in this case, I thought you were going to have evidence that men, members of the union, Local 807; or, rather, truck drivers from over-the-road, that they fought each other in a deluge of blood into death 6956
in an open grave: and you saw how things can be exaggerated. Now, that is one of the promissory notes that I submit to you that the Government failed to make good.

The Court: You may suspend now. The jury may retire, and the defendants, any of them who wish to, may retire, and we will take up the Brant Restaurant Control Corporation matter very briefly.

(Short recess.)

Mr. Murray: Now, ladies and gentlemen, in those so-called acts of violence that were pleaded in this indictment and that the Government attempted to prove, have you heard one word of that outside of one incident where there was an appeal to the police, where the civil authorities and the criminal authorities of this county were called
in to prosecute? And certainly, ladies and gentlemen of 6957
the jury, if there were any serious invasion of the criminal law by any man that sits among those defendants, you may be well certain that there would have been a criminal prosecution in the local court. And yet there is not one scintilla of evidence of that. The only thing that I remember in this case is that a truck driver said he was hit in the chin, and that he went over to a New York policeman and he told him, and the policeman said, "Go

back to Jersey before you get hit on the other side of the jaw." You folks remember that.

I could not, if that is true, on account of the circumstances surrounding the transaction, I could not believe it is true; I could not find out who the police officer was; I could not find that that witness ever went to a police station to make the complaint, and I could not find that he ever went to a local prosecutor to ask for a prosecution. And now, as I said, what we thought at the outset was going to a bloody deluge turns out to be what? Nothing. Five or six disputes where a hand was raised and a harsh word was said in nearly a year and a half of this alleged
6959 conspiracy. So far, ladies and gentlemen of the jury, where it is urged that acts of violence were committed, I say to you in all sincerity that you can take that with a grain of salt.

It is pleaded in this indictment, and the Government offered to prove that there was property damage suffered by the equipment of over-the-road drivers in the hands of these men. In all those transactions there are only two instances where any damage was done to a truck, and they were accidents. And you may remember that there was testimony here early in this trial that Mr. Bender, in driving a truck, in taking some heavy machinery off, broke—I do not remember whether it was a part of the truck or a part of the machinery; and there is not any evidence in this case that in these eighteen months or seven-
6960 teen months of an alleged conspiracy that there was a dollar's willful damage done to property.

There was evidence that Cahill, who was represented by my learned colleague, Mr. Boudin, had an accident to a truck, and Mr. Boudin is well qualified to talk for his client; and I only allude to the incident in passing, but it turned out that that was a pure and simple accident, and that the correspondence and telegrams that followed it showed that it was an accident. So far as violence and

blood and damage to property in this case goes, I say to you ladies and gentlemen of the jury that the evidence is nil, and I say to you it is of so little consequence that it is not worth my while to talk about it and trespass on your patience and precious time in this case. Perhaps in this entire record of thousands of pages, of days of testimony, of dozens of witnesses, you might find that a truck driver from over-the-road said that one of these men said, "I will smash your truck up." In another instance you may find that another truck driver said that one of these defendants said to him, "You will find your truck in the river."

I do not know whether any such thing was said by 6962
any defendants sitting in this court room. I say to you gentlemen and to you ladies, from the surrounding circumstances I do not think it is fair to infer that such a thing was said. But if it were said, which I deny, did you hear of any incident during this long trial where a truck wound up in the river? Did you hear of any instance in this trial where a truck was torn up? Did you hear of any instance in this trial, outside of those two instances which I spoke of, which appear to be the purest accidents, that there was any damage done to property?

Now, I would like to go to a phase of the case that might interest you, and I am going to because I do not want you to get any wrong impressions. Repeatedly and repeatedly you heard Government witnesses testify that 6963
the money asked for by Local 807 union men as compensation for employment was $9.42 a day. And you also heard it testified, and the exhibits show it to be a fact, that the union scale of wage was $9.42 a day. $9.42 a day—perhaps some of us do not earn that much a day, even lawyers; but that may look like a lot of money to a man who comes from Mullica Hill, New Jersey. There has been evidence in this case, ladies and gentlemen of

the jury, from the defense witnesses—and I am not going to try to point out the page of the record and call names and dates and places because I have been given a limited time to plead for my clients, and if I did that you would be here from midnight to dawn—but there has been evidence in this case that over-the-road drivers who came from long distances, and, if my memory serves me, they got as low as $12, $15 and $18 a week for their labors; and God knows how many continuous hours of labor they had to put in to earn that pittance.

$12, $15 or $18 a week compensation might be sufficient to keep body and soul together of a driver from Mullica
6965 Hill, New Jersey. I do not know how much rent he paid. I did not ask. I don't know whether or not be paid $8 a month rent in Mullica Hill, New Jersey. I don't know whether or not he grew his edibles on his farm and carried his meals in a paper bag. I don't know because I did not ask. But you know, ladies and gentlemen, that no one can live on that character of wages in our New York and keep more than 10 feet away from an alms house, as palatial as they are sometimes now painted. You know in New York, in contradistinction to Mullica Hill, New Jersey, that you have got to pay carfare; that you have got to buy lunches, if you have anything to buy lunches with; that even if you get a shine you have got to tip a bootblack to save yourself from his imprecation or prob-
6966 ably the evil eye. Well, $9.42 may be a lot of money to a driver from Mullica Hill or his employer, but it is not a lot of money in New York to a man who has family obligations.

For $8 a month in New York you couldn't live in the shadow of a doghouse. $9.42 might be considered adequate and even good compensation for the members of this union if they got it every day. But what about men with family obligations who, as the evidence showed in this case, got one day a week, two days a week and some-

times at the most three days a week. Two times $9.42 makes $18 and some cents compensation for a man who gets up at 6 o'clock in the morning, works from eight to five in the afternoon, and earns about $18 to meet his family obligations. You know and I know and every New Yorker knows—perhaps the man from Mullica Hill doesn't know it—the desperate effort it has been for an honest workingman in this community to get work since 1929 and to keep body and soul together. That just reverts back again to the proposition that while these men may not have been soft-spoken men, and maybe it seems to you that perhaps they were too insistent looking for employment, yet remember this, that they were looking for em- 6968
ployment and they weren't following a criminal career. And I say again, and I repeat it, because I have to repeat it, men with calloused hands and grimy fingernails who get up around dawn to get work are not criminals, and I want to ask you with every bit of sincerity that is in my body by your verdict not to brand them as criminals.

There is evidence here, and I suppose it was given to you with the calculation of bringing tears or sympathy from you for over-the-road truck employers, and the inference was left in your mind that some of them went out of business, some of them went into bankruptcy, and that the reasons they went out of business and went into bankruptcy was because Local 807 came in and asked them for $9.42 a day and were insistent on the local union men 6969
being put on their trucks. Well, on that score I ask you to remember the testimony of one of the gentlemen who I think was from Norwalk, Connecticut, who got—I don't know how many it was, a dozen or fifteen trucks on a shoestring; his entire investment, I think it was, was $2,000. He always had difficulty in paying the wages of his employees. I think there was a gentleman whose brother-in-law stole $300 from him. But did these defendants put that man out of business? He had nothing when he

started and apparently through his whole business career he was only about a half a foot ahead of the sheriff, and to impute to them, or to these defendants, or this defendant union, the responsibility for that company going out of business, I say to you ladies and gentlemen is unfair to those defendants and I ask you not to take that as a consequence flowing to that man because these men tried to get employment.

Now, so much for the man from Mullica Hill. You have heard vivid complaints from over-the-road truckers and the harsh treatment that they received in New York. As native New Yorkers you have heard before of men that
6971 came in and did business in New York and drove out again. That is no new sort of story. That has been the chorus of many a song you and I have heard for years. I didn't hear any of those over-the-road truckers or employers testify that they were buying gasoline in New York. New York is good enough to be used for what you can get out of it, but the principle that seems to be pursued here is, "Don't give anything back in return." You want to remember in that connection, in the face of their complaint of what they claim happened to them, that in New York we build roads on gasoline taxes, and we build those roads for the use not only of native New Yorkers but those who come in from outside of New York. They use the roads and we don't complain about it, and you and the
6972 rest of us who pay taxes pay for the roads, and don't forget that. Now, I am not urging that in retaliation, or defense of any charge of conspiracy, because I say there is no conspiracy in this case, but I just urge it on you in viewing the testimony of witnesses from Mullica Hill and other places who came into our city, and in judging the attitude that they assumed in this case.

We had another witness here from Phillipsburg, New Jersey, and apparently from the lady's attitude and from her speech how she must have loved New York. Now,

far be it from me, and I say that particularly to you ladies of this jury, to ever try to contradict a lady on any proposition; I never contradict a lady, but I am going to contradict Mrs. Libe. She came from Phillipsburg, New Jersey. She took that witness stand and she swore to what I believe you are justified in concluding was a fabrication, designedly and unconscionably done to try to damn these men and these members of this union. I said I am not going to mention names and places and dates, but long before that in the early part of this trial you had another witness on the stand, and he left you with the impression that there must have been an air of mystery connected with the union room in Local 807. He 6974
came in; the door was locked; there was a mysterious sound of a buzzer; it is opened; he sees a window with bars on it, the cashier's desk, and then in a mysterious eerie manner a door is opened into the inner sanctum, and he would have you believe that all this is done by thieves and toughs and gorillas, and he gets in. There was a pretty picture that was painted. If you wanted to swallow it and believe it and go into your jury room and be influenced by it you would probably say to yourself, "That is a pretty bad place up there." That was the picture that was painted. Untrue, unjust as it was, it remains for the lady, Mrs. Libe, to put the final daub on the picture. Here is a woman that said that she went into the union room. The union didn't send for her, and you know it. She testified here that she knew a man named Franz, 6975
and you don't see him sitting over there as a defendant; she knew a man named Franz some ten or eleven or twelve years before, and he is the first one that spoke to her. She went down to the union room to discuss a contract, and when she got in this kidnaper, assailant and potential murderer, Walter Larkin, meets her there. Now, you heard Walter Larkin testify on this stand, didn't you? You have judgment, and as New Yorkers and as psychologists

I think you can size a witness up pretty well. She said that that man tried to strike her across the face with an envelope or something else and then that the door was locked. Now, she is kidnaped, and I say God have mercy on her kidnaper. There she is, held for three hours and can't get out; there is that poor, helpless creature. There is a telephone there. The evidence shows there was a telephone booth within easy reach, that there is another door that she could have walked out of, and it finally turns out that it is a Yale lock and that all she has to do is open it and walk out to freedom and fresh air and away from these bad, bold men that represented Local
6977 807.

Do you believe that woman's story? Of course, anyone who insults or browbeats or oppresses a lady is going to leave a dark brown taste in the mouth of any jury when he or she goes in to deliberate. Do you believe that?

Now, I will tell you something else. Repeatedly in this case you find testimony that these men sitting over against that wall as defendants in this case never came into the case at all until after the contract was signed. You have evidence in this case that men were contacted by the employers themselves, that they sent them telegrams when to meet them; sometimes letters and telephone calls, and yet there they are sitting over there waiting for your sacred and solemn determination in this case when the evidence shows that men like Franz, and I am not saying
6978 this critically of him at all, because my attitude is that he did nothing improper in this case—Franz isn't here. This woman who was kidnaped and browbeaten and insulted, who signed a contract after first contacting Franz said Franz still works for her, and you find that time after time in the testimony in this case.

Now, of course, there are other Mrs. Libes and I am not going to say anything about them. I just told you

a moment ago that the impression might be sought to be left in your minds that $9.42 a day compensation is munificent compensation for a laboring man, and, of course, inferentially, I suppose you are asked to conclude that over-the-road truckers must have been oppressed and driven to the verge of bankruptcy and suffered the harshest kind of privation by being put out of business. Well, somehow or other there got into this record an exhibit, and I would just like to call your attention to it so that you may make up your minds whether or not those utterly crushed, oppressed over-the-road truckers were done such vivid, irreparable damage. Is $9.42 for eight hours' work a lot of money? 6980

Well, let us look for a moment at Exhibit I. I hold in my hand a bill of lading with the notation "Eastern States Transportation Company" on it, 87 Pennsylvania Avenue, Uniontown, New Jersey. And you remember the Richmond Radiator Company, and I think, if my memory serves me right—and it is not my concern in this case whether Cahill is supposed to have been the representative of the Eastern States Company over there when the truck was damaged—that the witness put Willie Campbell over there, the delegate, as the man who held that conversation with him concerning the employment of Cahill and others concerning the Eastern. Well, now, the evidence shows in the case that it wasn't poor Campbell at all. Campbell didn't work in Brooklyn: he wasn't a delegate in Brooklyn. It was some other representative of the union that was there and if he was there I say to you that in my opinion he was conducting himself with all propriety. But here it is, those poor oppressed over-the-road truckers who complain so violently about their mistreatment in our native New York. Here it is: March 9th, one load, $94.52; another load, $83.32; a third load, $104.10; another load, $90.93; another load, $106.89, and 6981

another one, I think, $97.90. So you see my friends the over-the-road truckers were not so hardly pressed for money, they were not so badly treated in their field of financing no matter what they may think about New Yorkers or Local 807 or any members of that union.

I ought to say a word, I suppose, because I told you before that if I singled out every one of these defendants and tried to review his testimony and the testimony touching him, we would be here forever, and I know you want to go home as soon as you can, and if I don't do that it is because time limits me, not, ladies and gentlemen, because my heart is not with every man who sits over there
6983 as a defendant in this case. I feel a grave and heavy responsibility in this case, because I am not defending criminals. But I ought to say something, I think, about Mr. Campbell, a delegate, and about Mr. Furey, another delegate. Not that I think in saying it that there is any evidence in this case worth a tinker's damn that shows that they ever committed a crime or that they were members of a conspiracy that did commit a crime. Now, they were delegates. Is there a scintilla of evidence in this case that Willie Campbell ever got a dollar from an over-the-road trucker? Is there a scintilla of evidence in this case that the man ever asked for a dollar? Is there a scintilla of evidence in this case that Willie Campbell or Austin Furey ever pulled a strike from December 1, 1936, up to June 1, 1938? Now, I defy the prosecution to show
6984 you that either Austin Furey or William Campbell went out and solicited on their own initiative either truck drivers or truck owners to join Local 807. It just fell to their lot that there were times when people, over-the-road truckers such as Mrs. Edbe and others, came into the union room about contracts, and Campbell happened to be there; it wasn't because he sent for the over-the-road trucker; it simply meant that in his function as a delegate he had a right to sign on behalf of the union. Well, so

did Mr. Hickey, the secretary of the union. You don't see him sitting there. So did Mr. Devery, the president of the union, and you don't see him sitting there. So did Mr. Larkin, the bookkeeper, the man who so foully misused Mrs. Libe, and you don't see him sitting there, do you?

As far as being officers of this union was concerned, Campbell and Furey were only delegates holding subordinate positions certainly to the president of this union and the secretary of this union. When I say contracts were signed by Mr. Hickey and Mr. Devery and other officials of this union, I don't say it with the slightest criticism. As a matter of fact they are not here and they 6986
are not on trial, but I am not condemning them; I am applauding them for what they did and for what every other official of Local 807 did to try to get work for native New Yorkers.

But Campbell happened to be a delegate. He took the stand. We probably could go further with the defense and be here to next Christmas, but I just wanted to paint a picture to you ladies and gentlemen and then let your own consciences decide this case.

Campbell told you he was a trouble shooter. Sometimes he saw as many as thirty people a day; sometimes a hundred people a day. So he was in this case at the mercy of any witness who took that stand and didn't want to tell the truth about him. He went out because 6987
he was sent out where there was trouble. That was his job. You would think Campbell and Furey must be pretty desperate characters, because some young fellows started a club called the Austie and Willie Club; so they must be desperadoes; it was a club that lasted two weeks and that Campbell and Furey had nothing to do with beyond the fact that one night Campbell was asked to go up there and talk to them. There is the picture of Willie Campbell as a delegate in this case. What did the man do beyond

signing a contract in behalf of the union that dozens of other union officials signed? And I say to you again, and I say it sincerely, that there isn't one bit of evidence in this case to show that Willie Campbell ever committed a crime or that he was part and parcel of this conspiracy, and I mean it when I say it.

Austin Furey—what did he do? There are one or two occasions when there were arguments between over-the-road truckers and their drivers, and he was called up and asked to go there, because as a delegate it was expected that perhaps he could end the controversy to the benefit of the union men and Local 807. That is the only reason
6989 he went there.

Is there any evidence in this case that Austin Furey ever went out on his own initiative, unsolicited, and talked to an over-the-road trucker or to an over-the-road truck driver? I say there is not any.

You remember the colored witness that came on this stand here. Oh, that is a long time ago. It seems to me before the deluge. Do you remember that he testified that over on the Brooklyn side of the Williamsburgh Bridge that Austin Furey drove up in a car and halted his truck, and in substance told him that he would have to get a Local 807 man? Well, you heard the evidence in this case, ladies and gentlemen of the jury. You heard that neither Campbell nor Furey had the slightest juris-
6990 diction in Brooklyn beyond the bridge, and that it was not any part of their job to go there at all; that they were delegated to work on the west side of Manhattan and in some instances it seems that they went up to the Bronx. But you know from the evidence in this case, evidence I think produced by the Government, that Furey nor Campbell were never in Brooklyn.

What has Furey done in this case? Has Furey ever taken a dollar from anyone? Was he ever compensated by any over-the-road trucker or his driver? Did he do

anything beyond talking to those men when they came in with their contracts? Did he send for them? And if Furey did something wrong, he only did what other members, other officials of the union did; and I say again that I do not say that in criticism of any official of this union, because I applaud every one of them, from the president down to the humblest truck driver.

Goddard said that on the phone Furey said it was too damn bad that the nigger was not murdered or something. Well, it seems to me that in the face of the evidence in this case, that you might well assume that that is not true, because the evidence showed in this case that 10 per cent. of this union, the truck drivers in this union, were colored men, and that they had employment through this union, and maybe got employment through Campbell and Furey. So if there is any effort out of the mouths of any witnesses for this Government to create color or race questions in this case, I just ask you to forget that. 6992

You have had evidence here of the unjust dealings to which the over-the-road truckers were subject to; and yet if you want to read one of those exhibits, ladies and gentlemen, when you go into your jury room, the contract, you will find out that in that contract and in every contract there is a clause which provides for arbitration. And if these over-the-road truckers and their employes were suffering unjust acts at the hands of this union or any of those members of that union, they knew where to go for redress. Did they? Three times. Three times was the arbitration clause in this contract invoked; and that was when Goddard, if I remember, of the Brookline Transportation Company took his grievance s to an arbitrator, as I understood it, an impartial arbitrator named Sheridan, where it was decided. 6993

There has been an aspect, I think, sought to be put in this case where the inference is that the American Federation of Labor, so far as 807 was concerned, was fighting

the Vineland Local 590 in Vineland, New Jersey, and the York Local 430 in York, Pennsylvania, and a Yonkers local that I do not remember the number of, and a Bridgeport local that I do not remember the number of, and maybe a local down in Allentown, Pennsylvania. Now I am not going to trespass on your time in discussing whether or not those so-called union members were members of that union at the time they said they were, and whether or not those unions that I have named were bona fide labor unions. I will ask my dear friend Eddie Maguire, when his turn comes to address you, to say something about that. But I just want to call your attention to one in-
6995 cident, and the straw probably will indicate to you the way in which the wind blows.

Do you remember Byrnes, the fellow out at Vineland, New Jersey, the trucker? He took the stand, and in his direct testimony he said to someone—I don't know whether it was an official of the union or somebody else—he said to him, "Why, my men are members of the Vineland Local 590"—and this was in the spring of 1937; and he said further, "I am told that an American Federation of Labor union book or its card, rather, is good anywhere in the United States."

Well, that sounded pretty rough, didn't it? And then Mr. Maguire subpoenas Byrnes' books and his records. Well, he has contracts after 1937, and he submitted a blank contract with no one's signature on it; he said he could
6996 not find the original, that it was lost some place; and then unfortunately, of all years, the year 1937, he lost his grip in the Pennsylvania Railroad, and he could not get the evidence. And then it degenerated into testimony where he said, "Well, I have a verbal agreement."

On the questions of unions, on the questions of other locals being oppressed by Local 807, just take that as an indication.

Ladies and gentlemen of the jury, perhaps I have trespassed on your time longer than I should have. But this case is very dear to me and to my defendants, because I do not want to see—and I know you do not want to do it—see the horrible spectacle, of these men made criminals, if you decide the issues of fact in this case against them. And perhaps I should have asked the Judge for a week to plead with you, because every man that sits there is in my heart, and I ask you to find them not guilty.

The Court: Mr. Boudin.

SUMMATION OF MR. BOUDIN.

Mr. Boudin: May it please the Court, Mr. Foreman, 6998
ladies and gentlemen of the jury: Mr. Murray spoke to you about the defendants as individuals. He represents all of them with the exception of one. I represent that one, and I also represent the union together with Mr. Maguire, who will also address you.

I want to say to you, ladies and gentlemen, that you must bear in mind the two problems that are involved in this case. One is the freedom, the fate of the individuals who are on trial as defendants herein, and you must also remember, ladies and gentlemen, in addition to that, the rights of the men who compose the membership of this union Local 807, some 10,000 strong, who also very largely depend on the outcome of this case.

Ladies and gentlemen, you must bear in mind what these 6999
defendants, both the union and the individuals, are on trial for. Mr. Murray pointed out to you that the Government failed to redeem its promissory note with respect to the alleged awful acts of violence that you were led to believe when the case opened had been committed in this case or in this controversy which resulted in these indictments, and the vast sums of money that somebody levied as tribute on somebody else.

Remember, ladies and gentlemen, the Court will charge you, I believe, that these defendants are not on trial for any acts of assault, even if acts of assault had been committed. There are other laws, Federal as well as State, that take care of ordinary assaults, and ordinary threats to assault or to commit physical violence or to destroy property. That is not what these defendants are here on trial for; and I want you to bear that in mind throughout your deliberations.

Ladies and gentlemen, there are three indictments in this case, one under the anti-trust law, the others under the anti-racketeering law. Now I say to you that when you
7001 get into your jury room please bear in mind the laws under which these indictments are found. The anti-trust law is an anti-trust law as it purports to be. It is an act which Congress had adopted way back in 1890 to protect this country against rapacious trusts, and a trust is a trust. You all know what a trust is, and I need not tell you now, after the end of a six-weeks' trial, that Local 807 is not a trust, and that the defendants on trial here, the individual defendants, are no more members of a trust than the other 10,000 members of Local 807. And if they are not a trust, if Local 807 is not a trust, I say these defendants are not guilty of violating the anti-trust act, if there is nothing here in this case, no evidence in this case that they have been tied up with anything else but the union;
7002 and I will talk in a moment as to what they actually did. But remember there is no suggestion that they have done anything else except what a union is supposed to do, or what members of a union are supposed to do as their objects are concerned. I am not discussing now whether any one has or has not indulged in violence or threats of violence, because as I told you, that would have nothing to do with the case in itself. If anyone commits an assault he is usually tried for it, and he would not be tried in this

court and before you ladies and gentlemen of the jury. In any event the Court will tell you that that is not what they are on trial for——

The Court: Just a moment. Do not tell the jury what I will tell them.

Mr. Boudin: Well, I will say I expect your Honor to tell them.

The Court: Well, you may be disappointed.

Mr. Boudin: All right. It happens very frequently, your Honor, I am sorry to say, that lawyers are disappointed.

The Court: I do not want to have any confusion in the minds of the jury when they go to the jury room with 7004
respect to what I may say to them in my charge and what somebody else may say to them in an argument upon the facts of this case. There are jurisdictions in which counsel may argue the law, but in this court the jury are the sole judges of the facts, and the Court is the judge of the law. Proceed.

Mr. Boudin: Ladies and gentlemen, you understand, when I say the Court will charge you, I am expressing a hope and an expectation. I hope I shall not be disappointed. At any rate, the Court will tell you the law, and I am trying to tell you that you should remember what the charge is.

Under the Anti-Racketeering Act, again I say the defendants are not on trial for committing assaults, because the
Anti-Racketeering Act is also not an act against violence 7005
as such. The Anti-Racketeering Act is exactly what it says or what it purports to say. It is an act enacted by Congress to prevent what is called industrial racketeering. That is, the paying of money in industry by threats of force or the use of force. In other words, it is not the use of force as such or the threat of force or violence, but the use of force——

Mr. Cahill: I object, your Honor. I consider this to be an argument on the law.

The Court: Proceed.

Mr. Boudin: Well, it is not intended to be, Mr. Cahill.

The Court: Proceed.

Mr. Boudin: But for the purpose of obtaining money. So that these men are on trial either for running a trust, being members of a trust, or for racketeering or conspiring to racketeer; that is, to obtain money without giving value therefor.

When you come down to the facts in the case as they have developed before you, you will find that there is no
7007 such thing really involved as an actual trust or an actual racket, but that this is a dispute over work.

Mr. Murray very correctly told you that what these people are charged with is trying to get employment. That applies to the individuals. Insofar as the union is concerned, the union is charged with trying to obtain employment for its members, and obtain employment at certain rates of wages and for certain rates of pay and under certain conditions of employment, such as an eight-hour day and similar things. So that when you come down to the facts you will find that instead of dealing with trusts and with racketeering, it is a labor dispute that you are dealing with. It is a dispute between certain employers on the one hand and the labor union and its members on the other.

7008 It so happens, as I told you, that as far as individual defendants are concerned, I represent only one, namely, Cahill. I shall speak about him, but I want to say to you that in speaking about him, I do not want to create the impression that insofar as this charge is concerned, these conspiracies with which these defendants are charged in the indictments, is any different from others. It so happens, if you look at him, you will see that he is not a gangster or a guerilla; he is a rather mild-mannered fellow,

be spectacled, looks very much like myself, or rather, how I used to look when I was much younger than I am to-day; and I say to you he is no more a gangster or guerilla than I am or ever was. Nor is he a member of a trust any more than I am or ever was. And if I speak particularly about him, as I say, it is not because he is different from the others, although he may be less rough in his manner than others, or looks that way, but because he is rather typical in what he did, or what these men did, insofar as they all did it.

Remember, ladies and gentlemen of the jury, in addition to the indictments being under the Anti-Trust Law and Anti-Racketeering Act, these indictments are for conspiracy. 7010 No one is actually on trial here for having done something in itself, but for having conspired to do something; and all the indictments here, the one count under the Anti-Trust Law and the four counts under the Anti-Racketeering Act, are all for conspiracy.

A conspiracy means an agreement among many people to do a certain thing; and I say to you, ladies and gentlemen, as far as the doing of that thing is concerned—and that is all they are on trial here for—Cahill and the others are exactly alike, and that they are no more guilty of either anti-trust violations or anti-racketeering violations than he is; and he certainly is not.

Now I will say a few words about the testimony that is here about it. Ladies and gentlemen, I am unfortunately handicapped, as far as my eyesight is concerned, so that I 7011 cannot read very well. It would be a waste of time to change my glasses so as to be able to read from notes, and I must therefore rely on my memory; and if my memory is faulty in any particular respect, it is your memory as to the testimony that is decisive and not mine. Even if I were to read to you from notes, that would not be binding upon you.

As I recall it, here is the testimony with respect to Cahill and, as I said to you, insofar as the conspiracy is concerned, that is the essence of what these people are charged with —namely, doing the kind of things that Cahill did insofar as the evidence shows it.

There were three men that as far as I remember testified about Cahill at all: One was Mr. Beatty of the B. & B. Transportation Company, who was his employer. Then there was a man by the name of Spackman, Robert Spackman, I believe, of the Eastern Freight Lines, who is his employer. He testified about him at the time of this testimony, although he made no complaint. I will come to
7013 that in a moment. Then there was a man by the name of Bernot, I think, who testified that he was or had been a driver for B. & B. Transportation in the fall of 1937.

Let us look at the testimony as it was given here, or perhaps I will give it to you not in the order in which it was given, but in its chronological order. Bernot was the last man who testified, but his testimony refers to a time earlier than that of the others.

What did Bernot testify to? Bernot said that on certain occasions Cahill worked on his trucks, and on certain occasions he paid him or, rather, whenever he did work he did pay him. As I recall it, there was not a word or a suggestion by Bernot that Cahill either used force or threatened to use force either in getting the work in the performance of the work. Nor, as far as I can recall, was there
7014 any complaint by Bernot as to the manner in which Cahill did his work; nor, as far as I can recall, was there any complaint about Cahill as far as the charges made by Bernot.

As I recall it, Bernot's testimony was to the effect that when they came to discuss pay, Cahill said it would be $9.42 a day, and that they expected to do at least two trucks a day; and I think he specifically said, "And I said that was all right with me," or words to that effect. At any

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rate, there was certainly no complaint, no suggestion of anything wrong either about obtaining that work or in the course of his work. Cahill certainly did an honest day's work for the pay that he got; otherwise you would have heard about it. In fact, as it will develop a little further, there is affirmative testimony that he was doing work and that he was not getting money for nothing as would be the case under the Anti-Racketeering Act, because that is the only time I claim a man can be convicted on the Racketeering Act, that is, when he gets money without working for it, not when a man does work for it.

I hope the Court will instruct you that the Anti-Racketeering Act does not cover wages or employment or obtaining money because of doing actual labor. However, I do not want to get into an argument with my friend, Mr. Cahill, or be interrupted by the Court, and I shall not refer to the law again. I shall discuss the facts only.

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Now so much for Mr. Bernot. In fact, as I recall it, Bernot testified that his terms with Cahill were very friendly; that on one occasion when somebody wanted to work on his truck, he telephoned to Cahill and Cahill came down and said, "Well, we will let him go to work and we won't get into an argument." And Bernot did not have the money with him, so he loaned him the $9.42 to pay that man. Cahill is apparently a very mild-mannered man, and did not want to get into an argument with anybody, except once or twice which I will tell you in a minute about when I am discussing the other testimony. So much for Mr. Bernot.

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Now we come to Mr. Beatty: Beatty was an interesting witness, and I will have to discuss him from another aspect, or from more than one aspect. But now I want to discuss with you the testimony with respect to Cahill's getting to work. The important fact to remember in this connection is that when Cahill first met Beatty, or Beatty first met Cahill, Beatty already had a contract with the union.

That contract is in writing. It is here, and you may see it when you get into the jury room. I cannot read it to you; I have neither the time nor the capacity at this moment, but as I recall it, it is dated January 27, 1938. Cahill went to work on February 1, 1938. He had nothing to do with the making of the contract. Beatty so testified. He met Beatty for the first time in some small hotel downtown, and then said that under this contract the union had assigned him to work, and that is the first time we have a report of some dispute; but the dispute was not with Mr. Beatty, but with some fellow by the name of McGavish who thought he ought to have the job, and Beatty told
7019 him that he could not have it, that the union had assigned Cahill, and gave as the reason therefor because McGavish was suspected of doing work under-the-hat.

You ladies and gentlemen have heard what "under-the-hat" means. "Under-the-hat" means to do work below the union scale, and when McGavish was suspected of doing work below the union scale, the union assigned Cahill to do that work. In any event, that is not before you. I do not think Cahill is here on trial because he had been assigned to that job. Well, he started working on that job, and you did not hear any complaint about the kind of work he did. No one said that he refused to work; no one said that he did not do an honest day's work every day that he was employed by Beatty, and that is the only em-
7020 ployer who testified about work within the period of this indictment, which begins with December 1, 1936, and ends with May 31, 1938, a period of exactly eighteen months.

The first dispute that arose between Beatty or the B. & B. Company and Cahill was not over Cahill's refusal to work, or anything being wrong with his work, but because of the B. & B.'s failure to pay. Mr. Beatty himself told you that within a month after Cahill came to work for Beatty, Beatty fell behind in his payments. There was money, there was pay, there were wages due to Cahill;

so Cahill and a friend of his went down to Uniontown, Pennsylvania, to see Mr. Beatty about it. And that was the only time that Beatty reported they had seen each other between the time he employed him or came to work for him. Mr. Beatty himself testified here on the witness stand, as I recall it, that the first thing Cahill and his friend said when they got there was that he wanted this pay, that Cahill wanted the pay for himself and, I think, the helper, or another man of Local 807 who was working for him. And they had some argument about it, and then finally Beatty testified that he paid him. And then after he paid him, or while he was negotiating to pay him or trying to obtain the money, as he testified, from a man 7022
named Shipley, in order to pay him, he expressed the opinion that he could not afford to continue to pay the union wage, the union scale of wages. In other words, next to being behind in the payment of wages, he did not want to live up to his union contract.

And then what happened? Beatty himself again testified, and he says, "We had a long talk, and Mr. Cahill said in substance that 'if you think you cannot afford to pay'" — or because, as he said, that they would have to go out of business if he did not have some reduction, Cahill agreed to a lower scale of wages. In other words, he did just what he was not supposed to do according to the union rule, namely, make an under-the-hat arrangement. That was an infraction of the rules, but he is not on trial for 7023
that. The Government would not say that you should send him to jail for the infraction of the union rules. But infraction of union rules, like infraction of other rules or regulations or laws are sometimes excused by circumstances. Rather than to be without a job he agreed to work below the union scale even though he was a union man; and I want to say to you ladies and gentlemen of the jury that if there is anything that impressed itself upon my mind during the trial of this case, during the six

weeks that I have been sitting at that table listening to the evidence, it was this: That jobs were rather hard to get, and that men were out on the streets looking for jobs. And I say to you that if there has been any infraction of any kind of a rule—and I do not say there was—but if you should come to the conclusion that there was any kind of an infraction of a rule committed by some individual—and as I say, there was no evidence, nor are they on trial for individual infractions—please bear in mind that those infractions occurred while these men were looking for employment, were looking for jobs, attempting to earn an honest living. And the jury always has a right to take
7025 that into consideration when it comes to deciding the ultimate fact in every criminal case which is, as Mr. Murray told you, whether the defendant on trial is bad enough to be taken out of our human society and put behind the bars and ostracized.

But what happened after that? When Mr. Beatty first came on the witness stand he apparently tried to create the impression that his business was bad and that he went ultimately out of business because of harsh union rules with repect to pay and excessive wage scale. Well, did he pay the lower wages? No. And that brings us to the next time when there was a dispute between Cahill and Beatty. Mr. Beatty has tried to give you the impression as if the real dispute was over a truck that Cahill is supposed to
7026 have wrecked, as he put it. Well, after a little cross-examination, and I think it appeared partly in his own direct examination, it appears that the real dispute was over the fact that again he had not paid. This time he did not pay for two weeks. At that time he was working, Cahill, at the rate of $40 a week, a flat price agreed to by Beatty himself, as he testified. He did not pay for two weeks, and he brought with him two checks for $40 a piece; and apparently knowing that he was in trouble now, he attempted to do something by way of inscription, as he himself put it, as I recall it, "Our treasurer got mad and put

down some words on the check." And when the check was offered to Cahill that way he refused to take it that way, as he had, of course, a right to; as he not only had a right to, but as was his duty to do. He had no right to accept a check that would throw reflection not only on himself but on the union of which he was a member; and so he refused to take it in that form, and the man rubbed it out and then gave him the checks, and Cahill took the checks and went to work before the checks were paid. And the evidence showed that those checks were not paid when they were presented to the bank. There is a letter here in evidence—I do not remember its number, whatever it is know by—but it is a letter by Mr. Spackman, the next 7028
man whom I will have to mention, in which he writes to J. W. Murray, Cahill's friend who was working for Spackman, that one of the checks was cashed when presented to the bank, and the other could not be cashed because there was not enough money in the bank to cover two checks for $40 each, and that they would be watching the account of the B. & B. until the other check would be made good. Ultimately it was made good. But, ladies and gentlemen, it is clear to me that it could not have been, and I think it must be clear to you that there could not have been any real dispute about this accident to the truck, because anyone is liable to get into an accident. The truck accident was clearly an excuse on the part of Beatty, a sort of a counterclaim because he was behind in his wages. 7029
And if there is any doubt about it, let me read to you a telegram which Beatty himself or his partner Shipley sent when he got back to Uniontown. Apparently the real dispute was about the checks or the failure to pay. And when Cahill accepted the two checks and agreed to go to work before they were actually paid, Mr. Shipley, Mr. Beatty's partner, wired to the union, "We have reinstated Michael Cahill. Disregard first telegram. Differences adjusted."

Well, the differences that had to be adjusted were apparently the bad pay. If it involved also the truck, clearly Mr. Beatty never made it his position that there was anything wrong about the accident, as that position was untenable from the beginning.

That was not the end of the entire thing; and by the way, let me stop here for a moment. I do not think it is very important in the case, but I want to call your attention to something that is on this telegram. Mr. Beatty, for some reason or other, thought that it made a difference in this case who on the part of the union adjusted this grievance. Campbell happens to be a defendant in this
7031 case, so he said it was Campbell. Mr. Murray already pointed out to you that the evidence shows that it was not Campbell; it was Hickey. Campbell so testified. But ladies and gentlemen of the jury, as far as Cahill is concerned, it does not make any difference if it was Campbell who was the delegate that addressed it, or Hickey was; but as far as this case is concerned, it may make a difference, because it does show to what lengths some of the Government's witnesses will go when they think they can score a point against the defendants.

Ladies and gentlemen of the jury, when you get into the jury room I want you to look at this telegram, because in addition to what it contains that I have read to you, there is also a notation on it that reads, "Hold this. T. Hickey. 5/14/38." In other words, it was Hickey that
7032 was handling this case and not Campbell. There is written evidence of that. So you do not even have to rely on Campbell's evidence here. And by that same token you can judge of the rest of Mr. Beatty's testimony as to whether he did not try to color it where he thought he might color it and not be caught at it.

But there was no further trouble or difficulty because Mr. Beatty went out of business towards the end of that month or the middle of the month. When he did meet

Hickey, what did Hickey say? Hickey said, "You must live up to the contract. No longer will this under-the-hat arrangement be permitted."

The attempt to discharge Cahill, apparently, brought to the attention of the union the fact that there was an under-the-hat arrangement between Cahill and Beatty; and so Mr. Hickey put a stop to it about the middle of May; and as Mr. Beatty testified, he had no other trucks coming in after that, or they were so few that he could not remember them.

But, ladies and gentlemen, I do not want you to think or get the impression that this insistence on the union rates had anything to do with his getting out of business 7034
or his sending no more trucks to New York City. That is the impression that Mr. Beatty tried to create when he first took the witness stand; but you will recall after some cross-examination by me he had to admit that he had been in hot water, to use a colloquialism, for at least a year and a half before these disputes with the union, before he signed with the union. He had not been in a position to pay his ordinary bills. He had not been in a position to pay his ordinary accounts or anything else in connection with his business for a long time. He tried to help himself by getting other partners, to put in their moneys, to invest moneys in the business, and among others he tried to get Spackman, and Spackman apparently did not want to go into a bad business—that is, a business that 7035
was bad in itself; and so Mr. Beatty had finally to go out of business or, rather, the B. & B. had to go out of business; but it had absolutely nothing to do with the scale of wages that he was paying or that he was required to pay.

And I say to you ladies and gentlemen when you come to consider it, you will find that it is utterly absurd to think that a difference in wages being paid to an unloader, or a man who drives a truck for a day in New York City,

when the truck comes in here, keeps a man in business or puts a man out of business. And perhaps this will even better illustrate to you when you come to consider the other man, the last man who mentioned Cahill's name, and that is the witness Robert Spackman.

Robert Spackman has no complaint or grievance against Cahill. In fact, I think he said so specifically. He said the first time he met Cahill was on the occasion of the visit that Cahill and Murray made to Uniontown; and he reported that when Mr. Beatty made his arrangement with Cahill, which was below the union scale, he telephoned to Spackman, and Spackman met him at the Lafayette
7037 Hotel and he said that he wanted the same kind of an arrangement. And he got it. But he got it from Murray or McCaffrey who accompanied Cahill and not Cahill. He specifically said that his dealing was with Murray or McCaffrey. Cahill had nothing to do with it. The only time he mentioned Cahill was when he said that Cahill explained to him the arrangement he had made with Beatty.

So Mr. Spackman went and hired Murray to take care of his trucks just as Cahill was taking care of the B. & B. trucks. After B. & B. went out of business Cahill went to work for Spackman, and as I recall it he was still working for him when Spackman testified on the stand. Apparently he is a good, honest worker, and there is no difficulty as far as he is concerned as long as the employer
7038 lives up to his side of the contract. This brings me to the Spackman relation to this case, because when you consider Beatty and Spackman together you will probably see the kind of employer that is opposed to this union and that is behind this prosecution because I say to you, ladies and gentlemen, to repeat what Mr. Murray, my friend, said. It is not the Government of the United States, even though the prosecution is in the name of the Government: this is a fight between certain truckers and the union and

its members, and I want to show you what kind of trucker is fighting this union and the union arrangement. There are two kinds, the Beattys and the Spackmans. The Beattys are fighting it because they have no business to be in the trucking business. Their financial condition is such that they cannot exist one way or the other and they take it out on the poor non-union driver who will work for a couple of dollars a day less or a few dollars a day less, and they think that will save their business. It is, of course, nonsense.

The other kind of man is the type of man that Spackman is. Mr. Spackman now has a contract with the union, as I recall it, since April, 1938, but he is still in business. 7040
Cahill is still working for him. As far as I know union men are still working for him. He didn't go broke because he had to pay the scale of wages of the union, but he is sore because he is compelled to pay the union wages and so he comes to you and testifies apparently not about Cahill but another fellow named Murray, who is not a defendant, to show that there was something wrong about his getting the contract.

Now, there isn't enough evidence in this case as to what was the trouble with Spackman, what his agreement was, but it appeared to me, and I think, ladies and gentlemen, it will be clear to you that his real grievance was that the union made him sign a union contract and live up to the provisions of the contract, instead of having an under-the-hat arrangement with J. W. Mugray, or McCaffrey, what- 7041
ever his real name was. These, ladies and gentlemen, are the kind of truckers that are behind this prosecution; not the honest-to-goodness business man, not the fair-minded business man who believes in collective bargaining, who believes in employing union men, who believes in paying union wages, who believes that industry is better off when wages are higher rather than when they are lower. They are not here to prosecute this union or its members.

It appears in evidence, ladies and gentlemen, that there are 3,000 members of Local 807 working for over-the-road truckers. Out of 3,000 men some thirty odd are on trial here for things that they have done over a period of eighteen months. In other words, during a period of eighteen months there were some thirty incidents. Most of these incidents are like the ones I told you about Cahill where a man did nothing, but gave an honest day's work for the pay he got, and the only thing that ever happened was an accident, and where the employer didn't pay wages on time, and where checks came back when he paid by check.

7043 Then the testimony is that he only has over 200 contracts with over-the-road truckmen. How many of them have appeared here to complain that their union contract either put them out of business or put them on the road to going out of business or that they had been interfered with in their business? Ladies and gentlemen, it is all nonsense. This union is not a racketeering outfit nor is it a trust. Any man who is legitimately conducting a business on a sound and honest basis cannot have and does not have any criticism against this union. Let us see what it is this union is trying to do. It is trying to obtain employment for its members; it is trying to get the trucking industry in New York for New York truckmen. Is there anything wrong about that? Is there any racketeering in that?

7044 Ladies and gentlemen, I must depart for a moment from my intention not to refer to the law, but I must say again that I hope—I am almost certain, I might say—that the Court will instruct you——

The Court: No. You needn't go any further.

Mr. Boudin: All right, if your Honor please. I thought your Honor would permit me just to say what my hopes are.

The Court: I have permitted you to say what you think the law is, but I haven't permitted you to say what I shall say I think the law is.

Mr. Boudin: Now, ladies and gentlemen, I have practiced law for over forty years. I have formed certain opinions about this law, and I want to say to you what I think is the law, and I say if I am right on the law, if it turns out that the Court instructs you on the law in accordance with the opinion that I have, your verdict must be not guilty in this case on all counts.

Mr. Cahill: I object to Mr. Boudin stating to the jury what Mr. Boudin thinks the law is.

The Court: Yes. I said I had permitted him to state 7046
what he thought the law was, and in view of his statement at that time that he did not intend further to refer to it, I took it for granted that that was his determination. Now to revert back to it, I shall have to ask him to refrain.

Mr. Boudin: I respectfully except to your Honor's ruling limiting the kind of argument I may make, and I will try to confine my argument, with due deference to your Honor's ruling. Well, I haven't so much time left anyway, because my time is even more limited than Mr. Murray's, in order to not keep you here too late today. We have agreed to limit our time, because of that, as far as summation is concerned.

The Court: I would like it to appear that the Court has not suggested that anybody limit his time. The Court 7047
asked all counsel how much time they wanted and counsel themselves fixed the time. I don't want to have any misapprehension that you are being limited by me.

Mr. Boudin: No, your Honor. I said in order to be able to have all summations closed today we of the defense agreed to be very brief about it.

Frankly, we think the facts are so clear on our side that long argument wouldn't make them any clearer, and in order not to keep you here too late today we agreed on that.

Ladies and gentlemen, I don't think that any American jury is going to convict either a labor union or its members or ought to convict any labor union or its members because the labor union is trying to get jobs for its members, even if it involves the exclusion of others. That is the point of organization. A labor union wants everybody, every worker in the industry to belong to it in order that it may maintain its scale of wages which are usually higher than those of non-union labor; and in order to be able to maintain that scale of wages it wants everybody to belong to it, and the only way you can make others belong to it is if it succeeds in having people employ union men rather
7049 than non-union men. It is therefore perfectly proper for the union to go out and try to get employment for its own members even if it involves the exclusion of others, although in this case it doesn't involve the exclusion of others at all.

As already appears in the evidence in the case the so-called complaint is that we were keeping other union men out of the City of New York. That is unfounded, because we brought two labor union officials from other unions whose members are supposed to have been excluded to testify here, which clearly showed to you that they have no grievance. Every labor union tries to adjust itself to every other labor union and to adjust differences among themselves. They don't go to court under anti-trust laws or anti-racketeering laws in order to enforce their union
7050 rules. They respect each other's rules.

I claim that the evidence clearly shows that they were not keeping out any honest-to-goodness union men from the City of New York. They may have insisted that union men only be employed in the City of New York; they may have insisted on an arrangement whereby union men belonging to New York locals would be employed in New York, but we are not under indictment for that. I hope, and I am sure this being the only thing that can possibly

be brought against us under the Anti-Trust Act that your verdict will be not guilty as far as the anti-trust indictment is concerned, and I I haven't the slightest doubt that the same is true of the Anti-Racketeering Act. As I told you before, and as I believe it to be, the anti-racketeering law is a law against people getting money without rendering services.

Mr. Cahill: I object to his arguing what he thinks the law is.

The Court: Proceed.

Mr. Boudin: In this case it is shown that so far as the union is concerned and so far as the members who were enforcing the union rules are concerned, and that applies 7052
to practically all of them, what the union wanted was that the employer sign a contract with the union, and the contract that he signed provided for a fair day's work for a fair day's pay. I shall not discuss with you the question of whether $9.42 a day for one kind of truck or $8.41 for another kind of truck is proper pay. I don't think even the Government will claim that it isn't, and I say that based on the indictment. I read the indictment. We are indicted here for demanding $9.42 a day or $8.41 a day for the two classes of work involved. What the Government says is that we wanted $9.42 in tribute on a truck that came into New York City, not for work, and that we wanted $8.41 tribute for another kind of truck that came into New York and not as pay for unloading that truck. 7053
I say that the Government won't dare say that we come under the Anti-Racketeering Act if we rendered a day's work for a day's pay if that pay was $8.41 in one case and $9.42 in another case. They must say to you, and I think they will say to you that the indictment charges that we obtained money for nothing, and I say that charge may have sounded all right before the evidence was put into this case, but it is laughable now on the face of the evidence; and I call to your attention the testimony as to

7054 *Summation of Mr. Boudin.*

Cahill, who, as I said, is typical of this. Did Cahill get money for nothing? Did Cahill work when he got paid? Did Cahill say to anybody, "Give me tribute because your truck comes into New York City," or did Cahill say, "I will unload your truck, and I will unload your two trucks or unload perhaps more if I can do it within eight hours before I earn my $8.41, if it is an ordinary truck, and $9.42 if I work on a trailer?"

That is all there is to this case, ladies and gentlemen, and I will close by saying if to-day in this year 1940 with the progress that we have made in all walks of life a man can be sent to jail for insitsing on getting $9.42 a day for
7055 a day's work or $8.41 a day for doing another kind of day's work, or trying to get that kind of day's work, I say I am mistaken as to what my country is; and I say to you ladies and gentlemen at this point that I am not afraid to be disappointed in this case; I might make a mistake as to what the law is on a particular point or as to what the Court will charge you on a particular point, but I am sure I am not mistaken as to what an American jury will do under the circumstances in this case, and I submit my case to you in full hope and expectation that your verdict will be as it should be, not guilty on both indictments on all counts.

The Court: We will now take a recess until 2 o'clock.

(Recess to 2 P. M.)

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AFTERNOON SESSION.

The Court: You may proceed, Mr. Maguire.

SUMMATION OF MR. MAGUIRE.

Mr. Maguire: May it please the Court, Mr. Foreman, ladies and gentlemen of the jury: At the very outset may I too extend to you ladies and gentlemen of the jury the appreciation of the defendants for the attention that you have given this case throughout these six weeks of trial. It has been a long and arduous trial, a difficult case to follow, a difficult case—I can tell you this, too—to defend because of the generalities charged in the indictment and 7058
the impossibility of anticipating and seeking to meet proofs that might be adduced here.

There is one point that has not been stressed, and I am going to undertake to try and stress it because I think it fills in the gap that is left when you consider and weigh what seems to be the heart of the Government's charge that a reign of terror was created for a period of eighteen months in the City of New York, a reign of terror that was not suppressed by our local police and which made it necessary for our Federal Government to step in and indict. And then when you analyze that testimony you find that the reign of terror consisted of that which Mr. Murray outlined to you this morning. Eighteen months. That was no reign of terror.

I say this to you, that those contracts that were signed 7059
by different over-the-road trucking concerns were not caused or came about as a result of this so-called reign of terror; and I am going to try to explain to you, as I see it, and how I think it clearly comes forth from the evidence, just what prompted those people to sign the contracts; what was the heart of that which prompted them to do it.

A rather significant thing took place here yesterday in rebuttal. It struck me, and it struck my associates, I

think, as the Government rushing its big guns in, in rebuttal—the president of R. C. Williams & Company, the general manager of Austin, Nichols & Company, and so on down the line. Ladies and gentlemen, do you realize the state of the record with reference to those pivotal, important, crucial points? Austin, Nichols, R. C. Williams, the Embassy Grocery and the others.

The record, ladies and gentlemen, stands as follows: It is testified and it is not contradicted, and it is proven and established that the platform men and the warehouse men of these agencies of those organizations are organized, not in this union—there is no testimony to that effect—
7061 but they are organized union men. That was the record. When these big guns came crashing up here yesterday—and naturally the big guns testified to nothing—and in any event; despite the fact that they testified to nothing, you were supposed to get an impression to the contrary of what the record shows.

Ladies and gentlemen of the jury, if you, not being lawyers, wanted to show the conditions on the platforms at those places, what would you do? Would you get the presidents and the general managers or would you get the men that were directly in charge of those platforms, the supervisors there during this period? The Government knew that such men were available. They knew that they had direct clear-cut evidence available to them to show the conditions that existed during that eighteen months period.
7062 Did they call the men that had knowledge? They did not. Rather did they seek to go through with that show that they put on here yesterday, and fool you.

One of the whimsical, ironic things about this case as I see it—in fact, I have gotten a good deal of amusement out of it—is to say these people who have come from North Carolina and Phillipsburg, and all those other places, coming up here and in holy terror holding up their hands because they said 807 would not recognize the cards of out of town unions.

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Ladies and gentlemen of the jury, Mr. Cahill was good enough to offer in evidence, and there was received in evidence the constitution and the by-laws of the International Union. Let me read an extract from it:

"It shall be compulsory for a member working under the jurisdiction of another local union to procure a transfer card at the first regular meeting from the local of which he is a member, and to deposit the same with the local union under whose jurisdiction he is working within 30 days."

Ladies and gentlemen, there was one witness here that testified that she wanted some of her men to join 807, and she was refused. That was Mrs. Chudy. That is the only testimony in the case with reference to men being refused permission to join 807. On the other hand, these people from 590 and so on are said to have not had their rights recognized. Ladies and gentlemen, their rights were expressed in their International Brotherhood Constitution. They could have required a transfer of those men who engaged in the work in the City of New York to 807, and 807 could not say nay; they were required under their own constitution to accept them into membership. But they did not want to do that. That is not what they wanted. Because if this fellow from Phillipsburg or Vineland, or wherever it may be, the fellow that worked according to one contract here on that trip of 130 miles back and forth, and this work here and back again, for a wage of $7.50, if that man came into 807, exercising his rights under that constitution, naturally then he would come under the New York City conditions, and as a New York City man he would be required to receive the union standard of wages and hours and conditions here.

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So they were not sincere. They had the available rights. There was no interference with the American Federation of Labor, no destruction or attempt to limit the rights of another local union of teamsters.

Now let us pursue this thought a little further. I would like to go as rapidly as possible, because the time is limited, on a trip with you up to Connecticut, down to York, to Allentown and then down to Vineland. In this first matter I am going to refer to, and much of it I am going to take directly from the record, I want you to consider it in two lights: first to show that those people who protested in horror that we would not recognize cards of other unions were only seeking to get cards to use them as a smoke screen to defeat wage standard scales. Now there is a secondary phase to this thing up in Connecticut, and it has a very general application: You have heard the wit-
7067 nesses testify that they could unload a truck in a half hour, an hour, or whatever it may be. Ladies and gentlemen, I tell you and I think you are convinced from having heard that record that there are very few of those trucks that were in New York for unloading and loading that didn't take the best part of a good eight-hour day, or more.

Now as to this imposition on over-the-road men as they call it, of the requirement that they have a City man, when you go up to Connecticut on this Steller expedition, let us consider whether or not it is an imposition by us or whether it was a natural necessity in the very nature of their business.

Now, you will recall a man by the name of Steller. I think he was a cousin or son or something of Theodore Steller, the trucker of Shelton, Connecticut, who testified
7068 here. On direct examination he was asked "Are you a member of a union?" "Yes, at that time I was a member of 445 Yonkers." Another driver, Monar, of the same concern was similarly questioned. He said, yes, he was a member of Local 445 Yonkers. That certainly left the impression with you, as I know it left it with me, that at the time that these things were alleged to be occurring that he was a member of another local union.

Now I quote from Mr. Steller's testimony on page 140; on direct examination:

"Q. Are you a member of any labor union? A. Yes.

"Q. What union? A. 445.

"Q. Is that a Yonkers local? A. That is right.

"Q. Do you know of what International? A. International Brotherhood of Chauffeurs, Teamsters, Stablemen and Helpers."

It certainly left me with the impression that he was testifying about the time of these alleged incidents. Then on cross-examination however of Mr. Steller we find this in the record, page 151:

"Q. Now, you say that you are a member of Local 448, 7070
a union in Yonkers?"—that is by Mr. Murray. "A. 445.

"Q. 445, rather? A. Yes.

"Q. Are you? A. Yes.

"Q. When did you join the union in Yonkers? A. It was in August of 1938, I believe.

"Q. So that between the latter part of 1937 and June first of 1938, you belonged to no union? A. That is right.

"Q. Well now, where do you reside? A. Shelton, Connecticut."

Then Mr. Murray brought out that despite the fact that the gentlemen resided in Shelton and that there was a union in Waterbury eighteen miles away and another one in Hartford, not so very far away, that he saw fit even though his course didn't take him near Yonkers on his trip back and forth to go over to Yonkers and ask for a 7071
book and become a member of that union.

Now, Monar testified that he was a member of the union for approximately a month. That is Local 445. He was working for Steller before he joined 445. Now it is rather interesting, I think, that this man Monar gives you light on why these people were trying to join these unions. He was asked the question: "What were your conditions before you joined this union 445? Were they the same before

7072 *Summation of Mr. Maguire.*

as after?" Clearly, distinctly without question he testified, and it is a fact, that the joining of a union to him meant nothing in the way of improving of conditions.

Now, there has been so much talk of unions, trade unions and the like, in the past number of years that there is no mystery about the thing. In a practical way you know what happens in a union. It goes out and seeks to organize a particular plant, seeks to secure members and get them in the union. Then they go over and sit down with the employer and say, "Now here, we have to do something for these fellows. Their conditions need betterment and improvement." On the other hand you can say if a man
7073 has any desire to join a union frequently he will, but in the nature of things, it is in the nature of human nature that the union itself is not going to run around to each member and say, "Are you getting union conditions?" I mean, you couldn't police the situation thoroughly like that. So here is a fellow coming in over the head of his employer, a non-union man mind you, in New York, trying to fool the union platform men and the rest of them, members of other unions, into believing he was a bona fide union man. He wasn't, and you know full well that union men wouldn't act the way those fellows were doing it, cooperating with the employer to reduce their wages and conditions exactly as they were before, and to defeat other unions that were legitimately and properly seeking to carry out their functions.

7074 Now, one other phase of this Monar testimony is very interesting, and that is on this question of how much work was needed in New York. Now, Steller testified that back around 1932 or 1933, mind you, long before any alleged conspiracy occurred he had a contract on his operations from Shelton, Connecticut, to New York, with 807. Now, the contract expires. He apparently just decided he wasn't going to continue unionizing in the City of New York, and what did he do? Did he say then and did he do then what

he claims here? That there was a half hour's work or an hour's work and they didn't need a City man? No, ladies and gentlemen. The very nature of his operation, and because of the fact that it was eighty miles from Shelton to New York required that he keep Monar, the witness Monar, in his employ through 1934, 1935 and 1936 as a New York City man, a non-union man. That was his operation. He needed a City man, and he had a non-union City man. It was perfectly all right with him as long as it was a non-union man and no wage conditions imposed, standards imposed, but as soon as it was an effort to bring about union conditions there, then, my heavens, it violated every law of the land. 7076

I won't bother reading further from the testimony on that, but I know full well that you can appreciate that which comes to us out of that particular incident, and I say it is typical. No. 1, those men went into Local 445 and were in there only for a month or so with the hope of fooling everybody, passing as union men when they were not union men; secondly, that in the nature of this over-the-road operation as proved by the fact of this man Steller's hiring a non-union man and having him steadily in New York in 1934, 1935 and 1936, he needed him, and it wasn't any outrageous imposition of a City man on his operation. The only thing outrageous to him was the condition of the wages that were sought.

Now let us go out to York. H. Earl Pitzer is a gentleman that I believe originated in Biglerville. The record shows that is some 210 miles; it is twenty or thirty miles I think beyond York. It comes within the jurisdiction of the York local. Now Pitzer, you will recall, and his drivers you will recall, said, "Oh, yes, we carry a card of 430 of York, Pa." Let us scrutinize the record and see what trickery and chicanery was sought to be practiced there. In October it is testified, Pitzer's trucks were coming in and out of New York; October, 1937, and No- 7077

vember, 1937, and out of a blue sky—and this comes from the official records of 430, from the mouth of Jacob Schmehl, the official from that union: In November of 1937 suddenly all his men who traveled to New York became members of 430. Now I could understand that, and I could say, "All right, he is getting labor-minded, he is going to have his people join the union, but he should have them conform to the union conditions; otherwise it is meaningless and it is a fraud on everybody."

Do you remember hearing Schmehl testify when he was asked if Pitzer ever signed a contract with Local 430 to conform to the York, Pennsylvania, standards? The
7079 answer was that Pitzer from that date to this has never signed a contract, and he is still operating back and forth to New York. And do you also recall that most of his men when they thought the need of it was over decided that they would drop the book, they didn't need it? And that was, I assume, about the time that this indictment came down.

So there was a sham there; there was a fraud sought to be perpetrated upon all of us in that situation.

Let us go out to Allentown and see what the Hummel Warehouse has for us. The Hummel Warehouse, according to the testimony of Harold Klein, the representative of Local 773 of Allentown in the period of this conspiracy, did not have a union contract and it may well be assumed
7080 did not conform to the union standards and was using as the others had been using this book just as a smoke screen; another fraud:

Now I think Local 590, the conditions that we find in Vineland—I think that just about tops them all. This time I am going to read from the record with a reference to what Local 590 was. Incidentally may I just extend a little that which was referred to by Mr. Murray in connection with R. A. Byrnes? R. A. Byrnes insisted on this stand on direct examination, originally on cross-examina-

tion, that he was first approached in New York in March of 1937, I believe the year was. He said that at that time his people were members of Local 590 and he was told about the card being good all over the country. We asked for his contract. We got it—not from him, though; not from him. If you recall the contract that was produced, we produced it with his signature on that he recognized. That contract which is an exhibit, and which is important to you, became effective and apparently was signed on July 3, 1937. So that when he said that in March, April and May his men were members of the union he was telling an absolute falsehood, and that too was established.

This is one piece of the record that speaks so clearly 7082
and convincingly I will not make any comment on it. The witness Mattson employed by one of those South Jersey people—I can't find his name here now—but he was one of the very vehement people. He testified, page 283 of the record:

"Q. When did you become a member of the union in New Jersey?"—this 590. "A. The fellow I worked for always took care of that.

"Q. Did you belong to a union in the spring of 1937? A. Yes.

"Q. What union did you belong to? A. The South Jersey union.

"Q. What is the name of the local—the number of the local, rather? A. Local 896.

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"Q. 896? A. Or 897.

"Q. Don't you know the name of the local that you belonged to—the number, rather? A. I just got done telling you the boss took care of that.

"Q. Did you make an application to become a member of the union in New Jersey? A. No, sir.

"Q. Did you ever sign an application? A. No, sir.

"Q. Were you ever in the union room? A. No, sir.

"Q. Did you ever pay union dues?"

Then there is an objection. Then page 285.

"Q. Did you have a union card? A. No.

"Q. Or a union button? A. No.

"Q. Did the union ever give you anything to indicate you were a member of it? A. Not to me they didn't.

"Q. Did he ask to see your card? A. He asked me if I belonged to the union.

"Q. I ask you, did he ask you to show your card? or did he ask to see your card, your union card? A. Yes.

"Q. Did you show it to him? A. No, I couldn't. I didn't have any."

7085 Don't you think that that is convincing enough as to Local 590 and what the card of these men down there meant?

Now let us come back to the consideration of these platform men. Here is what the record discloses: Trucks had pulled up to R. C. Williams or these other concerns and the men there had refused to accept merchandise from these trucks.

You have heard and you recall instances where some of these fellows were in the diner across the street, and some of these over-the-road drivers said, "Do you want to do a day's work?" And came over and got them. That happened, apparently, from the record, not once but dozens and dozens of times.

7086 You heard what transpired at the Embassy. It was not a case there of any violence. There was no question or claim of any intimidation. You have heard testimony from different witnesses to the effect that some of these men may have gone and spoken to the shipping clerk. You will recall a particular incident involving Magan, and that is the man that they used to stop at his home, and go up there, and where Commissioner Morgan's detectives or somebody came up from the place and called for Magan at his home, and came up; and Commissioner

Morgan's detectives said, "What can we do when they would not receive the freight?"

Ladies and gentlemen, that is readily understandable. They would not receive the freight because of the fact that they are alive to sound economic principles which each and every one of you know of and recognize.

Here all we have to do in the summer time is to hear that the crops are burned, and we all know automatically we are going to pay higher prices for the food shortly thereafter. We do not have to go back to school or read any books to know this.

We have immigration laws in this country and if some day, we will say, we were to drop those laws and to bring 7088
into the City of New York, we will say, 200,000 coolies and introduce them and drop them into the New York labor market, people who could probably live on rice, and things that were very cheap, and whose standards of living would permit them to go along and live and would be satisfied with 50 or 75 cents a day, live in squalor and poverty—you know what effect 200,000 coolies would have in the City of New York on labor conditions here. How long do you think it would be before employers would prefer to hire the coolies and throw out of work these other men that were working in the City? It is one of those natural things that we have seen happen time and time again.

Fortunately, those platform men that are organized 7089
recognized those things just as well as each one of us does. And they knew this, that if they were going to work with and alongside of underpaid and overworked drivers, no matter whether they come from China, South Jersey, Pennsylvania or anywhere else, that the natural economic effect is that it tends to break down the standards that they themselves have achieved and are seeking to maintain. It is in the nature of things. And those men on the platforms, in the warehouses, know that just the association with that situation is ruinous to themselves.

It is as if a plague was coming to someone. You expose yourself to it, the contagious disease is acquired, and that is how these economic situations work out.

Do you blame them for refusing to decline to expose themselves to the plague of poverty, which unquestionably would have come to them if they encouraged the increase and the continuance of these underpaid and overworked men in the City of New York? No. They are educated beyond that point. They refused merchandise under conditions you have heard, and I say this to you ladies and gentlemen, that which prompted these people to sign contracts with 807 was not any reign of terror.

7091 You have seen, it was the organization of platform men, warehouse men throughout the City of New York. You have heard their expressions, "You cannot come into New York; you have got to keep your trucks out of New York." That does not convey anything but the acceptance which I know, and you who have lived here know, that all unions make, recognize, extend one another, extend assistance and support, and they may in their own interest and the maintenance of their own welfare, they may refuse to work with people who are objectionable to them.

Of course the union wanted contracts. Of course they wanted employment for their men. Of course they knew that these protests about not having any work for the City man—it is an outrageous situation. They knew how much hokum it was.

7092 Ladies and gentlemen, you must recall the testimony. The record shows that 200 over-the-road trucking concerns operating in and out of New York have contracts with 807 and employ approximately 3,000 of 807 members. It is necessary to these operations, just like Steller tried to tell you that it was not necessary, and then without thinking of it presumably admitted that he had a City man, a non-union man for the three years preceding this.

Let us test their good faith a little more: Look at one of these contracts. Mr. Murray referred to it, but I think we might go into it a little more in detail.

Section 9 reads: "Should any difference arise between employer and employee, the same shall be submitted to arbitration by both parties. Failing to agree, they shall mutually appoint an umpire whose decision shall be final and binding."

I don't know. I have represented a lot of unions. I have lived with them, their troubles and their heartaches. I have seen organizations developed, new in the field. I have seen the readiness of labor unions—and I will say this with all sincerity—to arbitrate differences. I have 7094
seen where there are rough edges in relationship. I do not stand before you and say that any one of these men wore wings or had any halo around his head. I think that some of them were out of place when they cursed or swore or did anything like that. But where there is something of that sort where it is necessary to settle and adjust an industry that is a new industry, mind you, less than twenty years old, that the place to do it, ladies and gentlemen of the jury, is through the use of an arbitration provision.

You take any one of the situations complained of after contracts were in effect, whether it was a complaint that a man would do only one truck or two trucks a day—take any one of these situations and where was your perfect 7095
solution for it? In the court of arbitration provided for in the agreement. Why didn't they resort to it? Because they were not anxious to get fairness. They did not want to help to settle and steady this industry down where it was functioning properly and decently with normal labor relations, but they wanted to go back to the old tricks that they preferred, to defraud union books, and any other devices that they used to keep down wages.

As to the union itself, will you show me one word in that lengthy record that establishes, or tends to establish that it was not the union's purpose, and the purpose of every official of it to see that a man got an honest day's work for a day's pay? That is clear. Out of the mouths of some of the Government's witnesses that admission was made, that that is what the union officials told them, that they were entitled to a fair day's work for pay.

If you find these people guilty, I do not know what you are doing indirectly to the Police Department of the City of New York. You can't tell me or any other citizen of New York City that our Police Department is not efficient and would not be the first body to arise and strike 7097 down any effort to create a reign of terror in the City of New York.

It is amusing, too, isn't it, when you consider how the South Jersey gentlemen scheduled the places where they should gas up. Not in New York. Out in Uniontown, Pennsylvania, or New Jersey or some other place. Even that trivial contribution we could not expect. I suppose we are called City slickers, but on the other hand, if these people get away with this, we certainly will be anything but City slickers.

Now I am going to conclude, conclude with a description of who I represent here. I represent Local 807. It is a labor union. It has been organized and is functioning in the City of New York for many years. It is a labor 7098 union that met a new developing industry, an innovation; a labor union, as all of the other labor unions, they also met this condition, met it without any Federal support, supervision or control.

And I think that during the course of this trial the Court stated that he would take judicial knowledge of the fact that the Federal Motor Vehicle Carrier Act became law in 1935. That is the first effort to regulate, on the part of the Federal Government, these over-the-road

trucks. Picture, unregulated and uncontrolled prior to that time, what the conditions were. Picture, too, because it cannot almost automatically go into effect, picture how many years it has taken for them to begin to function. Where we can now say to the Federal Government, the same Government that is prosecuting us here, say, "Thank you, we are glad you came along; we have got a law and we have got an agency now that will help us to share the burden of an unconscionable industry that was grinding every one of us down and that would destroy our wage of scales and our conditions. We are glad we have a partner now which we did not have in those other years."

I represent 9500 men that are in that labor union, men 7100
that live in New York City, men whose wives and children are being supported here; men who pay New York City rents, men who patronize our local stores, men who don't look for a life of ease and luxury; men who will, as Mr. Murray said, go out six days a week at 6 o'clock in the morning in the hope of getting work, and being fortunate at the conclusion of the week to come home with two or three days' pay. Those are the people, the 9500 men that we represent. And I say this to you, that if you find these people guilty, the 9500 men as represented in their union, that you are branding each and every one of them who only sought to live, as a racketeer.

Mr. Cahill: If your Honor please, I am going to try to shorten what I have to say to two hours, in view of the 7101
lateness of the hour now; and I would rather go through without interruption, if I may.

The Court: Well, we will take a recess to 3 o'clock sharp, and then you may have from 3 o'clock until 5. That will be without any interruption.

Mr. Cahill: All right.

(Short recess.)

The Court: Mr. Cahill.

SUMMATION OF MR. CAHILL.

Mr. Cahill: May it please the Court, Mr. Foreman, ladies and gentlemen of the jury: You have listened to a great deal of talking to-day, much of it of an emotional and oratorical variety. I realize that you are tired, and as I told the Court before we took the recess, I am going to try to confine my remarks to one hour less than the government originally asked for; and with that in mind, with certain parts of my talk I shall proceed quite rapidly, and therefore I would bespeak your closest attention.

You can sit back and relax while I talk, because I am not going to shout at you. I don't belong to the school
7103 that believes that eloquence takes the place of evidence. You have listened here to-day to some speeches that in large part, it seems to me, are defenses of cases that are not before you. What I have to say is in the nature of a talk, and a talk about plain facts, because during the course of my discussion I am going to take up not only the general conspiracy, but as well the evidence as it applies to each and every separate defendant, so as to help you in your deliberations. Counsel has said earlier to-day that that could not be done; that it would take a week to do it. Well, I will ask you to judge if I cannot highspot the evidence and correlate it for you as to each separate defendant. Then you ask yourselves the question why didn't defense counsel do it for you.

7104 I would be less than gracious on behalf of the United States if I too did not extend our appreciation and gratitude to you for the careful thoughtful attention that you have paid to the evidence in this case during the past six weeks. You have given up your daily occupations to perform that which we regard as the most important duty that any citizen can be called upon to perform in time of peace.

While we have been engaged in this trial the newspapers have been filled with the news of the International situa-

tion; the radio has been carrying constant broadcasts on the subject. We are not at all concerned with the situation abroad; our concern is with the situation here in the United States. We are engaged here to-day, as we have been throughout years, in the pursuit of the enemy from within, which is crime in all its forms.

None of us is here in an individual capacity, neither you nor I. We are here in a representative capacity. You are here as a cross section of the American citizenry. You are not sitting here as New Yorkers; you are not sitting here as Pennsylvanians; you are not sitting here as New Jerseyites. You are sitting here as Americans.

I never thought the day would come when I would stand 7106
in a Federal court and hear pleas made to an emotion which is narrow and sectional in an attempt to incite a feeling in the minds of a Federal jury which would cause that jury to feel differently towards people because they happened to live in Pennsylvania or North Carolina or New Jersey.

This is one country where fortunately we can pass from state to state without having to show a passport as we cross the borders of our states. And it is to preserve that unique quality which we as Americans enjoy that we have prosecuted this case, while fairly, nevertheless with all the vigor at our command. Because as I listened to those appeals that were made to-day, and as I listened to some of the questions as they were asked throughout the trial, 7107
it did seem to me that we were being asked, in effect, to Balkanize the United States; that is, set up barriers between sections; that people are not the same people as we are in New York if they do not happen to enjoy the good fortune of living in New York.

You know, if we in New York were to set up barriers preventing the free passing of goods from one part of our country into another, in this the greatest commercial center in the world, we would soon stultify and cripple and

crush the very reason for our existence; and when counsel goes on and drums into your ears the names of a particular town in our neighboring State of New Jersey, Mullica Hill, Mullica Hill, Mullica Hill, as if somebody who came from Mullica Hill, New Jersey, was quite a different person from what we are here, and that we should on a narrow and sectional basis discriminate against that person because he does not happen to live in New York, that he is a different type of being, that he is a coolie, because he happens to come from some place other than New York City.

You are called upon to have the courage to decide fairly
7109 —because we want you to be fair; that, after all, is the essence of American justice, to be fair—the issue between the Government the United States on one hand and these defendants on the other.

We urged you at that time to keep your minds open when we opened this case, because we told you that we did not want you to begin your deliberations until you had heard all the evidence. You will recall again that I urged you to pay attention to the way that witnesses testify; to the way that people conduct themselves in the court room, because it is my experience that you get just as much of evidence through your eyes as you do through your ears.

Defense counsel to-day have urged upon you many sympathetic considerations. I say to you merely that you are here as American citizens doing your duty, and that you
7110 cannot, in justice to your oaths as jurors, allow sentiment or sympathy to enter into your deliberations, because your duty is a stern one, and I know that each and every one of you will live up to your oaths as jurors.

In your deliberations in this case we urge upon you to bring your common sense to bear, to apply to your considerations here the same good judgment that you would give to the most important transaction in your private lives.

Bring into your deliberations, ladies and gentlemen, your everyday experience in business and in home. In sitting here as jurors do not strip yourselves of that rich background of experience and tradition which you as Americans have. Do not consider this case something separate and apart from the routine of your daily lives. Approach it with the attitude that you would have if you had listened to this testimony in your offices or in your homes.

We often say to ourselves when we are not serving on a jury, or are not doing jury duty, "How do these things happen," when we read of some event in the newspapers. Let us take the situation in the instant case. You 14 are the first persons to hear the story as it has been outlined 7112
in this case to-day. You have heard how the covered wagon of modern times, which is the over-the-road truck, has been treated on the highways of New York City and its environs. When you are given this case have in mind that from the testimony there can be no doubt that when trucks came into this city from other parts of our nation, our country, that these defendants, these birds of prey fastened their talons on our fellow Americans and said, "It will cost you $9.42 to enter the greatest city of your country."

Remember, as you approach your deliberations in this case, that you must do your part to see to it that tribute and toll cannot be laid on any part of this country on the passage of goods from any other part of this country. We have no tariffs; we have no walls; we have no forts; we 7113
have no frontiers as between the forty-eight states of our country.

You know so often homely illustrations from everyday life help the approach to a consideration of a lawsuit. Quite often when you go to the theatre, particularly where there is a successful play being shown, and you ask the man at the box office for tickets, by his rather contemptuous attitude toward you you get the idea that he, the man in the box office, thinks that he is the hit rather than the

show that is playing inside. So too with these defendants. They have capitalized on the belief that they are necessary to New York; that without their consent commerce cannot come into the City of New York.

Like the roving bands of old, these defendants have fed upon commerce from afar, capitalizing upon the ignorance and the awe of New York City, which the city instills into those who are not familiar with its ways; and these defendants have sought, and successfully, to erect on the west side of Manhattan, in our own city, a Peking Gate through which the commerce of this country cannot pass without paying its tolls to them. They have wilfully disregarded
7115 the fact that the surest way to drive commerce away from the City of New York and to dry up business here is to be careless, to be indifferent to assaults and restraints upon those who seek to do business with us.

The fact is, the testimony shows, that several of the truckers who testified here no longer come into the City of New York, but instead take their merchandise to other seaport cities of the United States.

There is no civic consciousness on the part of any of these defendants. Theirs is an outstretched hand with the palm turned up, of a rowdy element, under the guise of labor unionism shaking down other Americans.

There is no more vital place in the City of New York than its markets, and once the market place becomes a place of oppression, where willing buyers and sellers can-
7116 not meet with freedom, then the market place ceases to exist, and our structure is threatened to its very foundations.

Counsel had done here to-day in summation, insofar as there was any reference to the facts before us—because there was a great deal of talk about economics, a dredging up of an alleged economic issue which is entirely foreign to this case; which is just so much dust in your eyes, because we are not trying here any economic case; we are

trying the case of extortion by these defendants from other Americans for coming into the City of New York. Counsel has attempted to employ, so far as they dealt with the facts at all, one of the oldest techniques that ever was employed, and I call that pulverizing the evidence. What counsel does is this: Counsel takes a single item of evidence—let us say it is like a twig—and he holds it up, and turns it around and examines it before you, and says, "Nothing wrong with that," and puts it down. Then he takes up the next single item of evidence, and takes it and turns it around and says, "Nothing wrong with that," and puts it down, and does the same with the third and the same with the fourth. You can take any criminal case and pulverize 7118
it into elements as small as that, and examine each element separately, and come up with the conclusion that in and of itself the separate elements do not prove the case. But reverting to the twig analogy, which is the refutation of that argument, if you take each of those twigs, put them together in a bundle—and that is what you have to do in arriving at your decision in any criminal case—the collective strength of that bundle of twigs is greater than the single strength of any one twig in the bundle.

I think that counsel overstated himself when last he spoke and said there was no one word in this record about the union knowing anything about this. No one word about it. So strongly do I feel that counsel overstated his case that I shall take as my test the words used by the 7119
union delegate, one of the defendants here on trial, William Campbell.

You will recall that William Campbell testified all afternoon under my cross-examination and denied consistently that he had ever seen an over-the-road truck stopped in the city; that he had ever heard an over-the-road truck was being stopped; that he had any idea that it was going on.

The next morning I put to him one single question. I asked him if it was not a fact that he had stated to a full

meeting of the 807 Local on April 20, 1937, that the chasing of hill-billies is a shakedown racket.

Those are the words out of his mouth, from his lips, and sums up my entire philosophy and approach to this case as set forth by William Campbell in the midst of this conspiracy, that the chasing of hill-billies is a shakedown racket.

To find in the first place a characterization in a union meeting of our fellow citizens, yours and mine, who come from points not too far away, as hill-billies, shows a state of mind, a narrowness of consciousness, which was emphasized in the speeches of counsel here to-day; an anti-
7121 pathy to the very thing that makes New York great as the clearing house not alone of its own goods, but as the clearing house for the goods of the world. And the characterization of our fellow citizens as "hill-billies" I find repellent and repulsive.

In that instance, though not on the stand, Mr. Campbell told the entire truth, and he said it in April, 1937, when the conspiracy was well under way, and that he said it at that time shows that he knew it, and that he said if at that time and denied that he knew it here shows that he did not tell you the truth when he was on the stand, either on direct examination or under cross-examination.

Mr. Campbell was right. He must have forgotten what he had said, but he used the right term, the right word as to what the union was doing. It was shaking down fellow
7122 Americans, and the shakedown was a fruitful one.

"Gypsy chasing," as it was called, became a profitable form of enterprise on the west side of Manhattan, and these defendants entered into the sport—because you know counsel to-day frequently said they found it amusing in the idea of chasing somebody from out of town. Perfectly all right. Of course, if it happened to counsel or to us when we went to some part of the United States other than

New York, we would think we were being denied our constitutional rights. But a citizen of one state is a citizen of the United States.

Visits from the law enforcement authorities, it has been shown, had no effect on them. Visits from the officials of the City Commissioner of Markets, visits from Mr. Morgan himself, the City Commissioner, nor even warnings from the Federal Bureau of Investigation had any effect on these men. This is no case of surprise. The evidence here shows that these defendants had warning aplenty as to the illegality of their conduct, and they were told to desist from it.

As citizens of New York, and I happen to be a native myself, you are familiar with the west side of Manhattan and you know full well what an excellent place for the operation of this shakedown racket the market places of the west side of Manhattan afforded. 7124

When counsel was summing up here he gave the attitude that these defendants were rather placatory in their demeanor. That was Needelmanns attitude on the witness stand, until I confronted him with certain writings to which I shall make further reference. You got the idea, referring to Needelmann, that he would go up to these over-the-road drivers and with the spirit of "Brother, can you spare a dime for a cup of coffee?"

As I said, when an over-the-road driver comes into New York he is a stranger in a busy, somewhat strange place, and when he is approached by a carload of men, or a group on foot, the invitation to accept their services more closely resembled the old gentleman who was walking through Central Park of a dark night, and a fellow came up to him and said, "Brother, can you spare $5 for a cup of coffee?" Only here it was not $5. It was $9.42. 7125

This conspiracy was a carefully thought out thing. It was no matter of chance. It was sought by Campbell and Furey, as the testimony shows, to give it the guise of

legality. The process was always the same. The trucks stopped by roving groups; the intimidation of drivers continued to a point where they were forced to seek entrance into this City furtively, as though they were criminals coming here. Those drivers were told to call up their bosses; these 807 defendants talking to the bosses on the phone, telling him that he had better come down here; the visit to the union hall; the questioning of the union representatives as to what this was all about, and the repeated statement that if this alleged contract was not signed, those American citizens could no longer do business in New York City. And under the duress and threats
7127 of that situation, the signing on the dotted line, and the selection of the No. 1 man—I want to dwell on the selection of the No. 1 man: What a premium on diligence? What an incentive this Local 807 set up? Because it has been testified here by the Government's witnesses and by defense witnesses as well that the No. 1 man had the right to select the other 807 men who would work on the job. And the No. 1 man was the man who stopped the job, the man who stopped the trucks.

You can imagine that these defendants would get up very early in the morning to make their raids on the commerce coming out of the Holland Tunnel in order to be the one who stopped the trucks so as to be the No. 1 man; and that part of the system was not only acquiesced in but consented to by the union, as I will show you in a
7128 moment or two, when I go into a more detailed view of the evidence. When truckers asked couldn't they select the men to work on their truck, they were told no. That prerogative belonged to the No. 1 man, the man who stopped the trucks.

Now let us pause for just a moment: Look at this situation as it affects yourselves. Suppose that any of you ladies and gentlemen should have occasion to go over to Philadelphia in the pursuit of your business, and when

you get over there to discharge your business, suppose some Phiadelphian came up and said, "You don't look like a Philadelphian to me. Where are you from?" And you say, "I am from far away New York."

"Well, I am sorry, Mr. or Mrs., you can't do business here. You have got to have a local Philadelphian as an associate of yours."

And that does not put it nearly so strongly as it was put to these over-the-road drivers who were told literally, "Move over; I am in."

Now let us suppose a truck wanted to go from New York to Boston, and suppose that the truck had stops to make on the way up—because we are not talking here of local 7130
operations; and when Mr. Maguire went on at such length about local operations in his summation he was not giving you the issue in this case. This case involves over-the-road operation, and I propose to stick to the issue here. Our truck starts off from New York, and it has got a New York local man on. When it gets to New Haven, if there is a drop to be made there, the New Haven local can say, "Step down, New Yorker. If you want to make a drop in New Haven, you have got to pay the $9.42."

The driver then goes on to New London. The same performance. He goes on to Providence. Same thing. He goes on to Boston. The same thing. What kind of a country would we have if that obtained? That is the situation which in its broadest form concerns us here.

It was no pleasant task for these Government witnesses 7131
to step down from the witness stand and go over and face this solid array of 807 drivers. Don't think for a moment that any of those witnesses enjoyed that experience. Those men, as they testified, have driven on the west side, and they have told you what has happened to them over there, and they have got to go back to the west side again; and be it said to their eternal credit, credit for their courage, that they did have what it took to identify those who had

molested and interfered with them and with their interstate commerce. Because it is only through having the strength to complain and the courage to identify that racketeering cases can ever be broken. If the one on whom the tribute is levied pays and says nothing about it, the system mushrooms out.

Counsel today said there are many more over-the-road truckers than the Government called here. That again, ladies and gentlemen, is age-old strategy. If the Government calls A and there is a B, the Government is always asked on summation why the Government did not call B? And if the Government calls B, they are asked why
7133 they did not call A.

We called here a cross-section of the over-the-road truckers from all nearby points, extending up and down the Atlantic Coast, and covering I think six States.

If, on the other hand, there are these other over-the-road truckers whom counsel would have you believe are happy in their relationship with 807, the opportunity was, of course, open to the defense counsel to call those other over-the-road truckers that the Government didn't think it necessary to call.

Now we have consumed six weeks here in showing you this serious and perilous situation. Mr. Murray has brought out in his examination and in his summation to you today that it continues up to this very moment.

7134 What did the union do after Campbell put on the record that this shakedown racket was going on and that the Local 807 men who were engaged in it, in the words of Mr. Campbell, were interested not in work nor in contracts but in the $9.42, because that was also included in his report? Did the union do anything about it? Why, nothing whatsoever; just let it go on unabated. In fact, when Campbell took the stand here he had the temerity to say he had no idea it was going on until he was crushed by his own report.

Then you remember that the record of his statement concluded that this must be stopped. Was anything done to stop it? Not a thing. Now, why was that put on the record that it must be stopped? That was a clever device in case anything was ever done about it, but where they fell down was that they did nothing about it, and when unions can't police their own membership, then in the interest of society, in the interest of the rest of the people in this country the law must intervene. Now why the union did nothing about this situation which was acute on the west side of Manhattan is equally clear. The two west side delegates were Campbell and Furey. The $9.42 a day was in the nature of a windfall. I will come to the 7136
little amount of work that was done for the pay. And did you notice, when I asked the defendants on cross-examination when did they join Local 807, how many of them joined Local 807 after this racket began to operate? George Needelmann, one of the leaders in it, joined in 1937, attracted by the big money; and while I am on that point as to the nature of the employment, I think that most of that testimony was given by the defendant Murphy who, when I questioned him said to me that he was told he was to get $9.42 a day and he wasn't to be asked either to drive or unload, and I said to him, "Well, what was there to do on a truck in operation other than to drive it and to unload it?" And he looked at me with an air of most injured innocence and he said, "Didn't you ever hear of an associate driver?" 7137

Now, that is what these boys were. These boys were associate drivers. Apparently Murphy was quite aware of the parasite nature of this alleged employment.

How would you feel in your businesses, ladies and gentlemen, if you were forced to take in an associate for the performance of a function that you were fully able to take care of yourself? I have never heard a more racketeering sounding expression than this label that Murphy put on

the whole thing, an associate driver. And I think Murphy also was revealing, when he told the driver Carll when Carll asked him, "What do you do for your $9.42, Murphy? Stand around?" Murphy said, and I quote, "I am here to see that nobody else molests you." I think that is most revealing as to their attitude of mind.

Now turning to Campbell and Furey again for the moment: I think you find their attitude toward the situation well illustrated in regard to the incident at the Brookline Trucking Company involving the negro Charles Arthur Brown. Furey told Goddard of the Brookline Company that it was too bad the black bastard had not
7139 been killed. Campbell on cross-examination said to me that he did read of the beating of Brown in the newspapers the next day and I said to him, "As the west side delegate what did you do about it?" And his answer, and I quote, was one word, "Nothing." There we have the attitude of mind of union delegate Campbell.

In approaching the questions in this case, you ladies and gentlemen have in mind, of course, that conspiracies are not open covenants openly arrived at and reduced to writing, and that in this case as in all cases the existence of the conspiracy must be proved by the circumstances.

Now let us look at the evidence with that thought in mind. Let us look at the uniformity of the conduct pursued by these defendants throughout the period. Let us
7140 see if the same technique wasn't applied by all of them because it is from that uniformity that we get the most powerful substantiation of the existence of a conspiracy, having in mind that this whole conspiracy stems from the time when Campbell and Furey were running for delegate and trustee, respectively, in December of 1936, and with the election of these two men the conspiracy went into high gear.

Furey, who was on the December, 1936, ticket as trustee did not long continue as trustee, but in April of 1937

Furey took his place as a west side delegate alongside Campbell. Now, again I urge on you not to be distracted by pulverizing of the evidence, separating it into single items and the attempt to get you to consider the case piecemeal, because I think in arriving at a decision in this case you have to look at the picture in perspective. You have to get a view of this course of conduct en masse. You have to block it out in relief in your mind. Now, visualize the actual happenings. The entrances to downtown New York when you come to think about it are easily covered. The principal artery on the lower west side used by these truckers was the Holland Tunnel.

Now, many of the over-the-road truckers told us as they 7142
came out of the Holland Tunnel or were in its environs, they were stopped by the individual defendants or by 807 men in groups. The tunnel was a favorite hunting ground, conveniently located at 807 headquarters. If the drivers were not stopped there, like hunted men they were trapped by automobiles following them to the very place of delivery, and there approached by 807 men.

Now just let me in brief outline illustrate some of the happenings. Mr. Murray said here to-day that there wasn't much violence and went on at quite some length about it. I intend to take issue with Mr. Murray and review the violence in this case, and I shall do it in some detail; but at the outset, do you recall that Dillon struck the driver Mattson and obtained $9.42 for the delivery of one five-gallon can of oil at pier 56? Mattson's request for protection from a police officer was disregarded. Fidler, one of 7143
the over-the-road drivers, saw Needelmann kick an over-the-road driver after saying he had to put a city man on his truck. Finlay was told by 807 man Farrell that one of Byrnes' drivers had been beaten up on the George Washington Bridge. There was Harbert, an over-the-road driver, who saw two men, one with an 807 button on, pull a Delaware owner-driver off his truck at Seeman Bros.

Now, I shall have a good deal more to say about actual happenings in addition to this actual violence. There were numerous direct threats of bodily injury. Dillon and five others threatened the driver DeRoches that he might be put in the hospital if he unloaded. Simpson threatened to throw the driver Steller in the river. Needelmann told the driver Nolder to put on a city man or anything could happen to him. Needelmann again told Fidler that the hell would be beaten out of Fidler if Fidler unloaded himself.

Now these men well knew that there is nothing that spreads like fear; fear becomes fear of itself again, and a beating of one man in an industry is like a spreading
7145 paralysis, and the news goes like wildfire up and down the reaches of the market place. It is not necessary, as Mr. Murray apparently would have it, that every driver be punched on the nose. You have seen these over-the-road drivers. You have seen these defendants. You are in a position to judge whether when these over-the-road drivers were approached by a group of these defendants these over-the-road drivers waited to be actually assaulted after they had heard what had happened to others. It is quite evident that the feeling of terror which the defendants had created amongst the over-the-road drivers reached the stage where without further specific assault these over-the-road drivers were coerced into doing what the defendants wanted. As to how successful they were you may judge
7146 from the tone of the voices of these over-the-road drivers as they took the stand. Why, you could hardly get these men to speak up. They were cowed. Mind you, as the proof here shows, these drivers gathered in certain few places and in those gathering places the effect of the beating of one is multiplied, and remember, too, that if anything it is easier for a shopkeeper who has a stationary place of business, if a racketeer attempts to extort from him, to get protection than it is for the driver of a moving vehicle, because there are many lonely places on the road.

where there is going to be nobody to help the driver of the moving vehicle, and that is why the trucking industry lent itself to this kind of maneuver. The strong arm work has only to be employed occasionally. That sort of tactics has often been referred to as softening them up. When several drivers have been assaulted, the others are softened up. As they come through the tunnel with the news ringing fresh in their ears as to what has happened to one who defied these racketeers, their courage quite naturally is somewhat affected. Put yourselves in the places of the over-the-road drivers coming out of the Holland Tunnel having heard of such goings on in this City of New York, which is a new and strange place to you. If somebody jumped on the 7148
running-board of your truck or your car as you came into the big City, just think what effect that would have on you. Take the situation which perhaps has happened to you in everyday life, where you have been parking on a New York City street on a dark night and somebody has come up and asked you for money for the privilege of using the City streets. Then compare that in your mind.

The truck owners were naturally concerned for the safety of their drivers, and in addition to the element of personal safety for the drivers, there was also a considerable element of fear of damage to the equipment. Just take a few cases on that for the moment. Dillon threatened to damage Steiler's truck in June of 1937. Needelmann threatened to damage Pitzer's truck, and told driver Koontz that he would run the truck into the river. Byrnes 7149
was told by a crowd at the Munson Diner, which included Randazzo, Downs and Dillon, that it would be a shame to upset such nice trucks as Byrnes', referring to three new trucks which had cost a total of $15,000.

Again, as I spoke of the truck driver being an easy mark on his road journey, the trucks themselves are easy marks for sabotage; a little sand in the crankcase when the truck

7150 *Summation of Mr. Cahill*

is parked for the night can do a great deal of damage; cargoes can be destroyed, as for example the perishable cargo of berries which became defrosted.

So to sum it up the impact of the stopping of the trucks, the threat to and the assault on the drivers, the threats of damage to the equipment were all calculated to produce an attitude of mind that it was easier to pay than to resist, which is the typical racketeering attitude, that it is easier to pay than to resist. When you add such episodes as the driver who complains to the policeman that he had one side of his face cut and the policeman told him he better go back to Jersey before he had the other side cut, you

7151 have something more; and I must say, ladies and gentlemen, that when I heard the laughter when that American citizen was testifying to that incident and when he was seeking redress, that my blood ran cold that anybody could be so callous as that. Mind you, I don't blame the local police authorities en masse for such things as that, but counsel has argued at length to-day that this type of situation could well be handled in the local courts. Now, counsel should know that the local courts have merely statewide power of subpoena and that they can't reach witnesses who live outside the State. The Federal Courts have nationwide powers of subpoena. We can bring people in here from any part of the unified country. This is an interstate case. Witnesses are brought here from other parts of our country because it is interstate. It is Federal

7152 and because it is Federal we employ our nationwide powers of subpoena which the local courts do not have.

Well now, with all the groundwork laid, with the reverse telephone calls to the anxious out-of-town trucker, down comes the business man to New York City. Now, ask yourselves the question as we pick it up from here, applying the standards of your own business, was the conduct of these defendants the conduct of ordinary business men engaged in honest pursuits, or was it something different? For

example, when the trucker came down to New York City, the over-the-road trucker, the owner, where did the meetings with the 807 people take place? More often than not on street corners, sometimes at gasoline stations. Put yourselves the question: Is that the way legitimate, serious business is usually conducted? What happens then? Well, the individual 807 man tells the over-the-road trucker that he has got to pay $9.42 a truck for the privilege which will be granted to him by the defendants to come into New York, and that if he doesn't his trucks will be tied up. Now, the distracted owner wants to know if something can't be done, and he is told nothing can be done, that in New York the rules are made by 807, and that he better 7154
send his $9.42 down with each driver when he comes into our City, and what is more, that he better not try to sneak a load into New York City, that he better telephone or telegraph the expected hour and place of arrival, because as Needlemann put it in his writings on the subject, the defendants had ways of finding out when loads were brought in without their knowledge, and the owner was told that if that was done he would have to pay for those loads.

Now, that $9.42 is, of course, a heavy toll on a common carrier. Mr. Murray went on this morning and said that their bills of lading shows $90 or $100 from Uniontown, New Jersey. Of course, I know Mr. Murray made a mistake. It wasn't Uniontown, New Jersey, at all; it was 7155
Uniontown, Pennsylvania, that was on it, which the testimony here shows was over 400 miles away, and the testimony further shows that that trucker was hauling for a radiator company and more often than not went back light which is their expression for going back empty, and that it took several days for the operation. Now, $90 or $100, the total compensation for the use of his truck, which will pay his investment, insurance, the pay for his office staff, the pay of his over-the-road drivers is not a rate of com-

pensation to permit $9.42 for the alleged work which we will discuss hereafter. The protestations from the poor business man that to pay $9.42 when he has a straight load that will take a half hour to unload are met with the statement, "Well, if you can't afford to pay it, just don't come into the City of New York"; and this owner whose trucks have by now been tied up is having difficulty with his customers. And in the case of Perry, he lost one of his best accounts. So he finds that the only way he can salvage anything out of coming into New York is by getting the $9.42 on the line.

Now ask yourselves this question in regard to the pay-

7157 ment: Why were these men afraid to take checks made to their own name? Are honest people engaged in honest enterprise afraid of having their names on checks? Why was insistence made on the part of these defendants that they be paid either in currency or in checks made to the order of cash? There is no doubt about that, because we have written proof here again from Needelmann who put it in writing—Government's Exhibit 8—telling Pitzer the check had better be to the order of cash.

Well now, the stage is set for the meeting in union hall. The man who has stopped the job takes the prospective victim to the union hall. Mind you again, the union has ranked that man who has stopped the truck, interfered with interstate commerce, as No. 1 man as a reward for going out and interfering with interstate commerce, stop-

7158 ping the flow of commerce. He gets the choicest pickings, the selection of the other 807 men. "My men" is the quotation from two of Needelmann's letters. Again Needlemann like Campbell denied that he ever caught a truck until it was proved to him from his own writings on the subject that he had admitted that he had caught trucks. Now, when the trucker is received in the union hall he is met by the bookkeeper Larkin or the business agent Flaherty, who testified here, or by the delegates Campbell

or Furey. By that time all of the softening up has been done. It has been demonstrated to the owner's satisfaction that might in this instance seemingly makes right. He reviews with the union officials the course of conduct to which he has been subjected, and he is told that he can either sign up or his trucks will stay tied up, and that if he can't pay he will not be allowed to come into the City of New York. He makes inquiries, can my men join 807, and he is told, no, the ranks are full. And yet the proof from the defendants who took the stand shows that numbers of them joined 807 right at the time when the owners were asking couldn't their drivers get into 807. In fact, the ranks were so full that 807 enlisted drivers who did not live 7160
in the City of New York. Of course, he is told that he cannot select the men who will work for him. Now just let us concentrate on the nature and quality of the consent of the truck owner at the time after all this work has been done on him. It doesn't make any difference that sometimes he was given a week to think it over. The heat was kept on him as much during that week as it had been before. Escape for him was shown to be as impossible as it had been at any time. The notion of giving him a week to think it over was to my mind a clever legal device to clothe the pressure and force that had been put on him to bring him to the union hall. That scheme was forged in the hope of their being able to say that thereby a voluntary employer-employee relationship was created; but if there is anything to the theory of arm's length bargaining, that is one situa- 7161
tion where the cards were all stacked against the business man. He has as much chance to negotiate in the union hall as a man has with a gun pointed to his head, and that is the language of the witness Beatty on that point.

Just think, ladies and gentlemen, here you have a contract. The subject of the contract is personnel; the essential elements on which we all spend considerable time in our daily pursuit, the selecting of our personnel, trying to

get the best men for the right job. Now if you were in the trucking business and had your all invested in it, you know how much care you would exercise to be sure you would get a careful, sober, experienced driver, but here the right to hire is taken away from you, and by whom? By the man who interfered with interstate commerce. That is the man set up by the union. That is the reward he gets from the union for bringing you in. That is the reward he gets for his end in stopping the flow of commerce between the States.

In the summary of Mr. Boudin here to-day he tried to create the impression that they were industrious employees
7163 of willing employers, doing a day's work for a day's pay. We don't have to rely on the testimony given here. There are writings in this record which show the contemporaneous declarations by the employer as to how they felt about the situation at that time. We have had reference here to the two checks that were given to Cahill. Mr. Boudin said there was some writing on them, but I notice he did not refer to what the writing was. The writing was "For protection against racketeering." Now, that expresses the state of mind of that employer at the time, and mind you, that check was rejected by him, although the writing on it was practically identical to the words used by Campbell in April of 1937, and there is abundant reference throughout the entire record that individual truckers protested
7164 that the whole setup here smacked of graft and racketeering.

Harris told Dillon it looked like racketeering to him. Beatty told Cahill that the payments were highway robbery. Then, of course you have the situation implied by the visits to the homes of these truckers. You will recall after Mrs. Libe visited the union headquarters there was a discussion about the contract that she says took place then. You will recall her testimony on that.

How did the defendants comport themselves? Did they by their conduct give evidence that they regarded themselves as employees? Do you recall that Steller discharged Bender for damaging merchandise? Bender replied that he could not be fired and Steller could not receive any freight without him. Needelmann told Pitzer that he, Pitzer, couldn't hire 807 man Downey, that Needelmann would put what additional men on that he, Needelmann, wanted. Ed Weinheimer told Goddard that not only could he not pick his own men, but Ed Weinheimer supplied non-union men to Goddard under the guise of being shop steward. Ed Weinheimer refused to let the Negro Brown work on the Brookline trucks, and when Goddard protested to Austin Furey, the delegate, Furey backed Weinheimer and required Goddard to fire Brown. 7166

Now, I am only highspotting the evidence. In addition to these illustrations of the rejection of employer authority, there are numerous others, and you will recall when Goddard complained to Ed Weinheimer about the careless way the freight was being handled Ed Weinheimer told him he didn't give a G.d. how the freight was handled. Furey told Buglio that even though he, Furey, hadn't bought the truck, that he was running the New York end of the business. When complaint was made about Ed Weinheimer drinking at lunch and taking trucks out on the streets of New York after lunch, Furey told Goddard that nothing could be done about it.

Of course, I think that generally the attitude of the 807 defendants here toward the out of town truckers is best shown by the testimony; that after the 807 men got on the trucks the trucks returned to their homes later than they had before the 807 men had anything to do with them. 7167

Now I haven't stressed many of the things that I might, but taking the demand for payment where no work at all was done: Mr. Magfire told you at length to-day about the platform men; that the platform men wouldn't allow

the over-the-road drivers to unload. Well, if that be the fact, why weren't the platform men called by Mr. Maguire and how did it happen that in very many instances over-the-road drivers were practically all unloaded before the rough 807 men came upon the scene?

Now, could you call Ed Weinheimer Perry's employee? He forced Perry's driver Dillman to pay him $9.42 on each truck, although he refused to touch the merchandise and told Dillman he, Weinheimer, was there merely to cover the truck. Were the repeated payments of $2 a load to Ed Weinheimer for the unloading of chickens by over-the-road drivers before Mr. Weinheimer had even got up in the

7169 morning wages by an employer to an employee? The unloading at the British American Distillery, the testimony shows, was done by employees of that company on the platform and yet 807 men, including Gaughan, collected their $9.42.

Was Murphy an employee doing a day's work for a day's pay when he testified that he was employed not to drive, not to unload, and when he told the driver that he was there merely to see that nobody else molested him? Was an honest relationship of employer-employee existing between Dillon and the trucker when Dillon told Byrnes he would take $100 to get off the job and extorted the $100 from Byrnes and took the $100? Is that the payment of an employer to an employee?

7170 In addition to all of the proof as to no work being done and of men just standing around as associate drivers, there is plenty of proof here that goes to show that these men were not employees, did not at that time, despite the protestations of their counsel to-day, regard themselves as employees and that the payments were not wages. Why, driver after driver took the stand here and testified that he had straight loads, which he unloaded to a wholesaler in New York City, and that in many instances these trucks went back empty. So the total amount of time that they

spent in New York was maybe a half hour or an hour; yet the 807 men demanded $9.42.

Sharkey and Klein, two other defendants, demanded $94.20 for unloading ten trucks in one week, although, it is clear that one man could have unloaded those trucks easily.

Hooks paid 807 men a day's pay for forty-five minutes' work.

In general the testimony was that the 807 men insisted upon and received $9.42 for doing very little work.

Counsel would have you feel that these defendants were very tender hearted and were very much interested in the welfare of these out-of-town drivers. Their interest in the 7172
out-of-town drivers was indeed deep and touching, when they compelled these out-of-town drivers to meet them at their homes in New York with their trucks. Their attitude toward the out-of-town drivers and their regard for the quality of their work was shown by the fact that the over-the-road drivers stayed on the truck in most instances while the associate drivers, as Murphy would have them called, were there.

Did you notice that Mr. Murray was quite surprised in the early part of the case? He asked on cross-examination as to whether these over-the-road drivers had helpers or not, and when he discovered that prior to the 807 men going on the trucks they did, we never heard anything more about it. I think he asked only the first witness, as I recall, in the whole case the question, did you welcome the 7173
assistance of the 807 men, and we got an emphatic no and that question was not repeated throughout the rest of the trial.

I want to turn to a consideration of the detailed evidence against each defendant. I am going to take each one up separately and I might direct your attention toward the particular defendant as we go along. The defendant Dillon, who is sitting in the second row, in the second seat

from the bench: now, the testimony here shows that Dillon was one of the most active participants. In fact, one of the drivers here testified that Dillon in June, 1937, told him that he, Dillon, was an 807 delegate, and he told the driver if he unloaded his truck at R. C. Williams that it would be too bad. The evidence shows further that in the spring of 1937 he was very active in stopping truckers from South Jersey. He stopped the Salem Express, the Eastern and Southern Transportation, the Buglio Trucking, and the Byrnes trucks; and you will recall that in March, 1937, Buglio came to New York after telephone calls and met Dillon and Randazzo and was taken to the union hall
7175 where Campbell said, "If you can't afford to use City men, you can go out of business." A week later Buglio signed. You will recall that Harris of the Salem Express told us that Dillon said unless he paid the trucks wouldn't move until they rotted, and that Dillon demanded a contract, and that it was signed on May 4th; and the names of Dillon and Randazzo appear on the back of that contract. Still further, Strozyk of the Eastern & Southern told us that in May, 1937, Dillon phoned him that his trucks could not unload unless he came up and signed a contract. He told us that he met Dillon in the Munson Diner and was taken by him to the union headquarters where he signed a contract, which again states on the back, Robert Dillon, shop steward, Bernard Randazzo, Frank Downs and Thomas Sharkey, among others. Four days later a contract dated
7176 May 19th was signed by R. A. Byrnes and again the names of Dillon, Randazzo and Downs appear on the back.

Now I want to pause right here on Dillon: Here we have three contracts all signed within a period of two weeks. You can examine their dates. One is May 4, 1937; the other is May 14, 1937, and the other is five days later, May 19, 1937. Ask yourselves the question, are these defendants honest truck drivers? In each case you will see that on the back of these contracts the No. 1 position is

Robert Dillon in each instance. The No. 1 position in three contracts within two weeks. Was there a practice of catching over-the-road truckers? Or was there a stopping and was it a conspiracy? Ask yourselves these questions and have these three exhibits in mind and recall that in each instance the name Bernard Randazzo appears as well.

If there were an honest to goodness contract, employer and employee relationship that was being created, why within the period of two weeks do we have the names of Dillon and Randazzo and Dillon the No. 1 man each time?

Next, Mattson told us that Dillon struck him when he attempted to deliver a five-gallon can at Pier 56 and forced him to pay $9.42, and finally Dillon told Byrnes that for 7178
$100 he would leave the job and let his friend Randazzo take it. Byrnes submitted it to him to get rid of him.

That brings us to Randazzo. Randazzo is sitting on the bench with his arm on the rest there in the middle (indicating). Randazzo was Dillon's right-hand man. He appears on the three contracts that I have just called to your attention and when Dillon took the $100 and left the Byrnes job Randazzo stepped into his place. Randazzo was present when Dillon told the Salem Company that the trucks would stay until they rotted. Randazzo was present when the Byrnes was met and he was present when Dillon assaulted the driver Cavello in attempting to take money from Cavello. I don't confine myself to these jobs that we have mentioned because Koontz told us that he saw Randazzo hanging around with Venditti and Downs and 7179
Needelmann and that he later worked on Koontz's truck.

The next defendant we take up is Frank Downs. Frank Downs is the second man from the far end in the front row. Downs took the stand. He testified that he joined the union in January, 1937, which was after the conspiracy had started. He was active in this chasing with Dillon and Randazzo. He appears on the Eastern & Southern contract with them. Hunter told us that Downs was present

with Magan and Randazzo on the occasion when Hunter's truck went back to New Jersey and there transferred the goods to a freight car. Byrnes' driver, Cavello, told us that Downs was present again with Randazzo and Dillon on the occasion when the trucks were held in New York for three or four days before they were unloaded, and Byrnes told us that Downs accompanied Dillon and Randazzo on a visit to Swedesboro seeking money for what Dillon had the effrontery to call overtime. Downs didn't confine himself to chasing jobs. He admitted that he worked for Pitzer and also that he worked for the Beemack Company of St. Louis. Then he went on and told us how he came to
7181 work for Klink, and I think that testimony is worthy of comment. You will recall he had told us he had no conversation with Klink, the driver of the truck, nor had anyone talked to Klink in his presence before the F.B.I. agent arrived. Another person, according to Downs, was working on Klink's truck. He doesn't know the name of that person and he asked Downs if he would work for that day. Contrasting that testimony with the testimony of the F.B.I. agent, Boyle, whom you all recall, Boyle's testimony discloses a typical example of how this group operated. Boyle told us that five men of whom Robert Dillon was the chief and Frank Downs a member approached Klink as he was unloading at the platform at the Savage Warehouse, and after sufficient persuasion the driver agreed to pay $9.42, and after the driver's consent was procured Dilion
7182 and his cohorts left.

The next defendant is Bender, Joseph Bender, who is the last man in the second row, the third man from the far end with the pink shirt. Bender, the testimony shows, stopped George Steller at R. C. Williams on different occasions. When the Steller trucks were stopped by Dillon Bender told Steller he would make his boss put on a City man. Bender told Haversat, another driver, that Haversat's membership in Local 445 was not recognized. In

other words, a local as close to New York as Yonkers was refused permission to enter New York City. Haversat testified that Bender damaged cargo while he was unloading and that Bender was no employee, I think is demonstrated by his conduct when Steller attempted to get rid of him and Bender replied that he could not be fired, that Steller could not operate in New York without him, but after Steller told him that he would go to the Department of Justice Bender never bothered him again. Ask yourselves the question, is that the state of mind of an honest truck driver or is it the state of mind of an extortionist?

The next defendant is William Simpson, who sits directly in back of the defendant Bender. Simpson took the 7184
stand and told us he was a shop steward for the Liberty Freight Forwarding. Steller told us at R. C. Williams, which was just around the corner from the Liberty Freight Forwarding, Simpson threatened to throw him in the river if he attempted to unload his truck and said that he would hold the truck in New York until he was paid, and Steller left without picking up the balance of his load until late at night. He had to come back for it in the dead of night, as if he were the thief.

Another driver, Haversat, was present and testified that Simpson made this threat to Steller. Simpson admitted he knew Steller. He denied making the threat. That presents for you a square issue of credibility as to him. On the one hand you have Steller and Haversat. Both testified that the threat was made. The defendant undertook 7185
to deny that. So as to him you have that squarely presented issue of credibility, and in weighing this testimony on that point you, of course, are entitled to consider his interest in the matter. We heard other testimony as to Simpson. The driver Finlaw testified that he overheard a conversation between Simpson and Farrell in which Simpson said that they were going to stop trucks coming out of South Jersey. Simpson admits frequenting the

diner where Finlaw overhead the conversation and admits knowing Farrell. Simpson, however, denied the conversation.

This threat to Steller was supposed to have taken place on a Saturday afternoon when Simpson would in the ordinary course of events be there.

The next two defendants, and I will consider them together, are Deegan and Horan. Deegan is in the corner on the bench and Horan is sitting in the last row in the center seat, the fourth man from the bench. Taking Horan:

Horan stopped the Reliable Motor Line and when Mitchell left, Mitchell being an 807 man, Deegan got himself
7187 in on that job. Deegan took the stand and attempted to explain what happened on the job before he, Deegan, arrived. According to the testimony of Miner, the owner of Reliable, Horan told Miner that he couldn't operate in New York without an 807 man even though his own men were union men and although the haul was less than fifty miles from New York City. Horan said, according to Miner, that Miner would have to pay each of two 807 men $50 a week. Horan later told Miner that the delegate wanted a contract and that one had to be signed.

The driver Agoes for the Reliable Company, told us that Deegan phoned Norwalk and said that the trucks would not leave New York until the money came. Finally, a couple of weeks before that company went into bankruptcy Mrs. Miner told us Deegan called and claimed salary and
7188 she said he hadn't been hired to make the deliveries for which the salary was claimed and he answered, "Send it down or your trucks will not work in New York again." Horan told the driver Agoes that if he, Horan, caught him making deliveries in New Jersey he, Horan, would cripple him.

Deegan on the stand denied some of the facts testified to by the Government witnesses. You will recall Deegan's demeanor on the stand when I asked him whether he

worked for any other trucking company at the same time that he worked for Reliable. He was very evasive. First he testified that he worked Evans at the same time that he worked for Reliable. Then after the mid-morning recess when we came back he contradicted what he said earlier. This time he said that he hadn't worked for Evans at the time he was working for Reliable.

We will pass now to the defendant Edward Weinheimer.

The Court: Mr. Cahill, before you do that, you designated Horan as the fourth man from the bench, and I don't know whether you mean that bench or this bench of mine.

Mr. Cahill: Your bench. Your bench is the only one I recognized. 7190

The Court: Well, he is the third man.

Mr. Cahill: Oh, yes. Zollinger is not there.

The Court: No.

Mr. Cahill: Then it is the third man.

The Court: I didn't want any misapprehension or to have any juror mistake the person.

Mr. Cahill: Thank you, your Honor. We now come to the defendant Edward Weinheimer. He is the man who is sitting in the second row, the second man from the far end. You will recall that Ed Weinheimer forced Dillman of Perry's Express to pay him $9.42 every time Dillman came to New York and that Weinheimer did not want to lift a finger to help Dillman unload and when Dillman suggested that Weinheimer might do something for the $9.42 Weinheimer told Dillman that he would knock his block 7191 off and said further that he would fix it so that Dillman couldn't come to New York and would fix it with his local in Buffalo. Although this $9.42 was for being a teamster, the testimony here is that this particular man, Edward Weinheimer, drove only once and then but for a half a block and nearly struck a child.

The first time that Fronk, a Perry driver, was stopped by Ed Weinheimer was on Atlantic Avenue at 4 P. M., and

at 5:30 Weinheimer demanded a day's pay and $1.77 an hour overtime until the money arrived. You will recall that testimony, and that the hours went on while they were waiting a Western Union telegram. Finally the bill came to $18 at $1.77 an hour, and it was compromised for $15.

I am not going to review in detail the testimony of Goddard about Ed Weinheimer during the period he was with Brookline. You have heard how Goddard hired another 807 man named Brown who wasn't one of Weinheimer's particular clique, and I pointed out to you that Weinheimer's associates insisted on being hired, including non-
7193 union men, and you will recall the testimony about the attack on Brown when Brown refused to go off the job, the attack with a baling hook by Weinheimer, and when Brown took that away from him with his bare hands, you will recall he went for help and two carloads of men, according to the testimony, were sent up by Furrey to help Weinheimer beat up Brown.

Weinheimer a few days before he went to work for Brookline was receiving money from the Lahn Transportation Company. There is an exhibit in evidence proving that. After Brookline went out of business we find Ed Weinheimer stopping Hooks of North Carolina. You will recall when Hooks felt he couldn't meet the demand or make the decision of closing his New York business, and he attempted to unload his remaining fixtures on his truck
7194 that Ed Weinheimer pushed him away and closed the platform door and told him he couldn't leave New York without paying, and it was only when the police came and escorted Hooks to the ferry that he was able to leave, and in accordance with the usual practice when Weinheimer and the two men couldn't intimidate Hooks sufficiently, one of them left and brought back a group of 807 men to give them a bigger gang, and the group that was brought back included the other defendant Needelmann.

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We come to the defendant Jakakas. He is sitting in the last row, the second from the Judge's bench. While we are on the subject of Hooks, Jakakas contributed to Hooks' difficulties by insisting that Hooks had to hire 807 men whether he wanted them or not. You saw Jakakas's demeanor on the stand when I cross-examined him. When I asked him when he went to work for the Syracuse Freight Forwarding Company, and he said 1935 and later discovered that he only joined 807 in February of 1936, you observed his demeanor. And then when I asked him what delegates had jurisdiction over the Cooper, Jarrett job over which he was the shop steward, and therefore most concerned, supposedly, with conditions, and I asked him what delegates had jurisdiction over the west side of Manhattan where that job was located, he said he did not know, which I say to you, it seems to me, is a patent falsehood.

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Now we come to John Weinheimer; John Weinheimer is sitting in the front row. He is the third man from the far end. John Weinheimer took the s[illegible] He accompanied Campbell and Furey in December, 1936, when Campbell told Hooks that Hooks had to use 807 men. He was present with his brother Ed when a group of them held Goddard in his office all afternoon and pushed him away from the door when Goodard attempted to leave. John Weinheimer on the stand denied all the allegations brought against him except the ones I have just referred to. I think that you will understand why John Weinheimer made those denials. And in deciding as to him, I would ask myself the question, "Why was John Weinheimer so anxious to keep witnesses from testifying before the grand jury in this building?". That is an important question to ask yourselves about him. Why else do you suppose he told Goddard to keep his mouth shut and knocked Goddard down on the day that Goddard appeared here to testify before the grand jury? Now Goddard has a different story, and here again you have got an issue of

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which do you believe? Do you believe Goddard's testimony on the point or do you believe Weiaheimer's?

I come to the next defendant, who is James Murphy. He is in the second row, and he is the fourth man from the Judge's bench. I have examined the constitution and by-laws of Local 807 which define the persons eligible for membership, and I do not find any category to fit the position that James Murphy put himself in when he took the stand, and that is the position of associate-driver which, I take it, is a sort of carrying over of the idea of a footman on a private car. Murphy was the fellow who was to neither drive nor unload, but was to get $9.42 to protect
7199 the truck from anybody else molesting it while he was in our city. I think that that is one of those instances where a defendant, out of his own mouth, speaking spontaneously before he thinks, gives us a real insight into what these men actually feel they were doing. You know full well that no business man in his right mind was paying this man for being an associate-driver. You just do not have things like that in common sense. And ask yourselves in regard to him, wasn't he with full knowledge taking pay for protection, for protection against racketeering? And that is the only question I think you will need to ask in regard to him.

Now we come to Harry Zollinger—you can't see him at the moment—he is the red-haired man who is sitting in a row more or less by himself. It is just a little in front of
7200 the back row, and he is the third man from the bench, looking against the wall. He is sitting behind Murphy. Zollinger, according to the testimony, frequented Leggetts Warehouse in his search for these over-the-road truckers. Hudson of the National Fruit Company was first stopped by Venditti, paid Zollinger $9.42 for each truck, although unloading in Leggetts took one hour per truck. Zollinger was also seen at the Leggett Terminal by William Betts, a driver for the Reed Trucking Company.

The next two defendants we will take up are the Reichlers, Samuel and Morris Reichler: Sam Reichler is on the end here near the Judge's bench, in the second row; Morris Reichler is the fourth from the far end in the second row. Sam, who is from Newark, stopped Hummel's trucks from Allentown. The only driving that he did, to qualify himself as a teamster and demand teamster's wages was to drive the trucks a distance of less than one city block. That is, from just outside the gates of Procter & Gamble in Staten Island, to the loading platform. Ask yourselves then again, whether that was honest work: whether in demanding drivers' wages for such services he was regarding himself as an employee or whether he was 7202
comporting as a racketeer, driving less than one city block.

Although the brothers Reichler got money payments from Hummel, they did not succeed in compelling Hummel to sign a contract. Hummel told them that he would not sign a contract; that he regarded the whole business as a racket. He was more fortunate than the other over-the-road truckers because his trucks did not have to come into the west side of Manhattan. He came only as far as Staten Island.

The next two defendants we will consider are La Marne and Bagley. La Marne, ladies and gentlemen, is the last one in the back row at the far side, and Bagley is the second man on the bench immediately in front of the spectators on your right. La Marne stopped the trucks of the Cline Company. Those trucks were held in New York for two 7203
days. There were four or five of them. Then Cline signed the contract. La Marne around the DuPont Warehouse threatened one of the drivers for Cline, a man named Zane, that if they were not allowed to unload the trucks they would tear them up. George Bagley was in this group with La Marne which held up the Cline trucks. Fontana, who testified here, another driver for Cline, told us that they were together on occasions, and that on the first occa-

sion that Cline's trucks were stopped. La Marne and Bagley were together. And thereafter they worked on the Cline trucks, and in addition to the Cline job the testimony is that Bagley also worked on Hooks' trucks.

The next defendant we take is John Gaughan, who is sitting in the last row, the man nearest the Judge's bench. Gaughan succeeded in getting $35 a week from Palmer, whether he worked every day or not, and during the same week he picked up $9.42 on the side from other over-the-road truckers. For example, Palmer paid him for the weeks including November 30 and January 15, 1937, and 1938 respectively. And on November 30, 1937, he received
7205 $9.42 from Snowhite & Gerson, as disclosed by the check in evidence. Further, this defendant Gaughan would accompany the trucks to the Starrett, Lehigh place and to the British American Distilleries where straight loads, that is, one-stop loads of glass were delivered, and where the consignees did their own unloading; and so there was nothing for the 807 man to do. And before 10 o'clock in the morning Gaughan would depart and say, "So long, boys," and receive his $9.42. Ask yourselves in regard to him, what does that testimony show his attitude to have been? Was it that of an employee or was it that of a man making a shakedown?

Our next defendant is Peter Waskiewicz. He is in the second row, ladies and gentlemen; he is the third from the Judge's bench. Waskiewicz, the testimony shows, ap-
7206 proached a driver named Betts when most of the load was off—and bear that in mind how often that happens; these defendants came up when the load is practically off—at the Embassy Grocery, and told him that he had to have an 807 man. But after a visit to the Federal Bureau of Investigation Waskiewicz left that driver alone. However, driver Owens, for Snowhite, had to pay him, as is shown by the receipt here in evidence, and Buglio also paid him, as well as Sharkey and Randazzo.

In weighing the testimony as to Waskiewicz, have in mind that according to his testimony, and I taxed him on this, and I asked him if he had ever asked an over-the-road driver to put a city man on his truck, and he said that the only time he ever did was when he spoke to Betts, and that was the occasion when the FBI was called in. Apparently, according to Waskiewicz's testimony, this was an inspiration he had at the time he spoke to Betts. He said he never did it before, and that this was the only time he had done it.

Now we come to Sharkey and Klenofsky, also known as Red Klein. Sharkey is sitting in the front row; he is the second man from the Judge's bench; and Klein is sitting 7208
next to him. He is the third man from the Judge's bench. These men did not even stop at the practice of holding up trucks after these trucks had already been stopped by 807 men and after the jobs had been made. For example, do you remember the trucker Lahn? Lahn had his trucks interfered with by Kolb, and after that, these two, Sharkey and Klein got Lahn and put him on for a week, and that is the week they charged him $94.20 for unloading ten trucks, although he told them that it could easily have been done by one man. Ask yourselves, is that honest work?

Kolb told Lahn that men like Sharkey and Klein would soon drive him out of business. You will recall that Lahn compromised the claim for $94 by paying $90 of which $80 7209
was paid by a check that was put into evidence. You will recall that Sharkey and Klein persuaded Hughes, one of Lahn's drivers, to sign his name to a piece of paper, stating that Sharkey had unloaded his truck in New York when, in fact, Hughes was already unloaded and was on his way back to New Jersey when he was overtaken by Klein and Sharkey together with others in an automobile and his truck stopped, and he was made to sign that statement that Sharkey had unloaded his truck which, of course, was not the fact.

You have heard mention of the Eastern & Southern Transportation Company. Sharkey and Klein assisted Dillon in working on Strozyk, and when Dillon left as No. 1 man, Sharkey became the No. 1 man.

Klein was particularly active. He was not only on the Strozyk and the Lahn jobs, but he also worked for Hooks. And he brought Stiles to the union hall as a boss ready to sign.

Now we come to Michael Cahill, who is sitting next to Klein, the fourth man in the front row from the bench. Cahill shows also the policy of Sharkey and Klein in that he forced out another 807 man, a man named McGavish
7211 who Beatty of the B. & B. had paid after Beatty was forced to sign a contract.

Mr. Boudin went on at length this morning about Mr. Cahill, and told us that he was an honest, innocent worker, and did not meet Beatty until after the contract was signed. The testimony is, however, that in fact Cahill stopped the job, chased McGavish off the job and then worked himself. Cahill told Beatty that he, Cahill, had stopped the job and that he had to be paid. McGavish lasted but one day. After Beatty testified before the Grand Jury Cahill had this happening with one of Beatty's trucks. Beatty told him that it was for revenge, because Beatty had testified before the Grand Jury. Was that happening to the truck an ordinary wreck? If it was, what did Cahill
7212 have to fear from Beatty's testifying before the Grand Jury? That is the question to ask yourselves in that instance.

In determining as to Cahill, remember that Beatty did not hire him, and when he accurately described, I think, the nature of the payments to Cahill in writing on his checks, "For protection against racketeering," he was using in substance the words of the defendant Campbell.

You will recall that Cahill went out to Uniontown, with another 807 man McCaffrey, although apparently McCaf-

frey was an alias; the man's name being Murray, and Murray refused to show any identifications; and remember that on that visit Murray told Spackman, "We hold the cards; we are going to collect, otherwise you don't operate."

That conversation in Uniontown took place while Cahill was still collecting money from the B. & B.

Now we come to George Needlemann: George Needlemann, ladies and gentlemen, provided us with the only account in writing of how this racket operated. He might be called a historian. But apparently on direct examination he forgot his proclivity as a columnist, because he went through a direct examination in which he denied without equivocation that he ever knew anything about these 7214
goings on. It was pretty much the same sort of testimony that Campbell had given before I confronted him with the question about the meeting in April, 1937. Now in examining these two letters of Needlemann's, you see that the pattern that we were told orally by Government's witnesses is set forth in writing now. Not in such fulsome detail, but it goes through the usual routine of catching the over-the-road driver, telling him that he must put a city man on, the phoning of the employer, et cetera. Ask yourselves again, what did Needlemann mean in his letter when he said, "Naturally I could not say very much over the telephone." If he had legitimate business with Pitzer, why couldn't he tell him what the legitimate business was? I think that one point here is quite illustrative, though in and of itself not important. Do you remember Needlemann 7215
twice used the expression, "My men," as though he were the leader of a group? And I taxed him and taxed him for about ten minutes in a series of questions. First he denied he ever used the expression, and then I showed him the letter, and then he, of course, admitted the letter; and then I said, "Who were your men?" And as I recall his answer, he said—and I quote, "My men, Tony." And I

said to him, could he give us the names of any others, and he did not. I think you have a right to take that into account.

Needlemann roved the city. He covered Brooklyn as well as New York. He told Wilson in Brooklyn that he needed a city man, and he put Jordan on the truck and later told Wilson to have his boss sign up, and if Needlemann could not get the $9.42, he would take all the driver had on him, as when he took $4 with Venditti for unloading some fruit; and you recall he attempted to extort $2 for delivery of two packages on West 23rd Street.

Now we come to the defendant Venditti. He is the fifth,
7217 ladies and gentlemen, in the second row from the Judge's bench. Venditti was Needlemann's companion. He was the one who accompanied him to Pitzer's home. Needlemann and Venditti together with the defendant Magan worked for the Needlemann Trucking Company, and joined 807 in the spring of 1937. In addition to Pitzer, Venditti was paid by the Salem Express on a job made by Needlemann, and he got $9.42 for being on a National Fruit truck at Leggetts for forty-five minutes; and on another occasion Venditti prevented one package from being unloaded until he was paid $9.42 for it. In addition he was paid by Barnes, Allen, Reed Trucking of Delaware, Rizzo Trucking of Maryland. In fact, Venditti collected from so many trucking companies during the period of the conspiracy that he could not remember the names.

7218 We have just three more defendants to go through. The next is Manuel Magan, who is seated, the first man in the first row nearest the Judge's bench. This is the man who testified that Strozyk and Hunter both came to his home and asked his help. These two men came to his home and asked for his help, and that he merely obliged them, and that his, Magan's, feelings were so hurt when they dispensed with his services that he would not continue with the protection unless they signed a contract. On the Strozyk

Magan succeeded Dillon and Sharkey as the No. 1 man. He took Hunter to the union headquarters to meet Campbell who told Hunter he could not unload a truck unless he signed a contract, and without a contract he could not use 807 men; and it was on this occasion that Campbell told Hunter that one man could not work on more than two trucks even though the form of contract provided for eight hours' work. Bear that in mind.

Layman, one of Hunter's drivers, said that Magan was paid $9.42 for unloading twenty or thirty times, although it usually took about three-quarters of an hour to unload.

Finally, ladies and gentlemen—and I am very near to closing; I will be almost within the two-hour limit that was 722
set down by me—we come to the last two defendants who are Furey and Campbell. They are the two without whose services this conspiracy could not have been so successful. Without the official backing of these two delegates who had jurisdiction over this part which was most affected, the over-the-road truckers could not have been made to submit to the rapacious demands of these parasites. They launched the conspiracy almost about the time they were campaigning for office in the union; and as I have told you, many of the defendants joined the union only after the election of these two men.

The first appearance of these two men together was at the time of the election in December, 1936, and at that 722
time Campbell attempted to force Hooks to sign a contract. The testimony goes on to the Brookline where Goddard was the manager. There it is shown that Furey backed Ed Weinheimer time and again against the complaints of Goddard. You will recall that Furey told Goddard, when Goddard spoke about Ed Weinheimer drinking at lunch and then taking the truck out in the afternoon, Furey told Goddard that he could not say how much one could drink at lunch and then drive, although Goddard told him that Ed Weinheimer was a menace as a driver under the influence of liquor.

7222 When Ed Weinheimer could not get Brown, the colored man, off the job after the fight with the bale hook, Furey sent two carloads of men from the Liberty Forwarding Company to finish the job, which they did. When Goddard protested, they told him if he hired a negro on that job, they would tie him up forever; and you will recall that Furey expressed his regrets that the attack on Brown had not proved fatal.

You will recall further that at the time of Weinheimer's strike over an hour and a half's overtime, Furey and Campbell appeared and walked out with the men and that Brookline then went out of business. Weinheimer needed a job
7223 after the Brookline went out of business, and Furey, whose law Weinheimer said was the only one he recognized, assured Weinheimer a new source of income by signing the Perry contract.

You will recall that Furey was the law for other 807 men as well as Weinheimer. One 807 man, Martin, objected to the driver Buglio unloading, although Martin was late, and that was the reason he was doing it. Martin went for Furey, and Furey told Buglio that he was running the trucks in New York City, and threatened to assault Buglio.

Now we come to Campbell; Campbell took the stand and gave, I think, the most remarkable testimony in the case, testimony, I think, on which you could well predicate your verdict, because Campbell just lied on the material points
7224 of the case from the moment he took the stand until the moment I hit him with a smashing blow of his own statement at the meeting in April, 1937. He told us in his testimony that not one over-the-road trucker ever told him from December 1, 1936, to June 1, 1938, that his trucks were tied up in New York City. He told us further that at no time did he have any idea that any over-the-road trucks were being stopped on the west side of Manhattan.

And yet he may be described as the official of 807 who has been most of the time on the west side of Manhattan. On the other hand, as against that, the record is full of evidence about his activities. In December of 1936 when he told Hooks he had to sign, he told Palmer the same thing. He signed that contract. He told Hunter the same thing; he signed the Pitzer contract, the LoBiondo contract and the Reliable contract, and you have been told how those jobs were made.

He told Mrs. Libe that she had to have a union man on every truck regardless of the time it took.

And then finally we have the statement in April, 1937, that the chasing of hill-billies was a shakedown racket, and 7226
that the men were neither interested in the work nor in contracts. He admits having made that statement, and he said he did nothing about it.

I know you are rather tired, and I am sure I am. I am about at the end. I have finished the consideration of the testimony against the individual defendants, and just a word or two more. When I take my seat in a moment or two, and after you have listened to his Honor's charge tomorrow, you will then undertake the most serious duty that you can ever be called upon to perform in times of peace.

In life we are all called upon to face the duties that are unpleasant, particularly where as here they are stern and necessary; and we cannot regard the defendants in any case personally, because we are here to do justice as 7227
well as between the hundreds of million and more of people who make up this country; and if we are to prove that democracy is able to function wherever a little autocracy like this sets itself up, and by its wilful conduct it says to peaceful, law-abiding citizens what they shall do and what they shall not, and preys on the commerce and raids the commerce coming into this city—whenever that autocracy sets itself up like that, democracy, if it is to function successfully, must strike it down.

7228 *Summation of Mr. Cahill.*

Counsel has told you that the defendants await your verdict and that this is an important case. I tell you as well, the people of the United States await your verdict. The question is whether you are to put your imprimatur, your stamp of approval on vicious practices replete with violence, having for their purpose the extortion of money, or whether it will be your verdict to strike down one of the most insidious and sinister rackets that has grown up within the walls of our city, and whether, by your verdict the word will go out throughout the United States of America, our country, to the Pennsylvanians and the North Carolinians and the Connecticut people and the New Jersey
7229 people, all Americans, that trade and commerce, American trade and commerce once more passes freely and safely through the gateways of our City. I thank you.

The Court: This court will adjourn until 10 o'clock to-morrow morning, but the trial of this case will not be resumed until 11 o'clock. That means that the jurors need not be here until, say, five minutes of eleven, and the defendants will be here ten minutes of eleven, to give us a full opportunity to check everybody in. And the charge will be delivered at 11 o'clock to-morrow, and the case then placed in your hands. We will now adjourn.

(Adjourned to May 23, 1940, at 11 A. M.)

7230

New York, May 23, 1940,
11 o'clock A. M.

(The roll of the defendants was called and all were present.)

The Court: The requests submitted by counsel have been passed on and I have noted on the margin their disposition, but at the conclusion of the charge I will take them up seriatim so that at that time exceptions may be noted specifically and before the jury retires.

Mr. Boudin: Thank you, your Honor.

(Requests, with the Court's notations, appear below as follows:) 7232

I. That the guilt of each defendant must be separately considered by the jury, and separately determined, under each of the indictments herein, and under each of the counts contained in the indictment under the so-called Anti-Racketeering Act; and that no defendant may be found guilty under either of the said indictments, or under any one of the counts of the so-called anti-racketeering indictment, unless the jury is satisfied beyond a reasonable doubt that he actually participated in the conspiracy charged in such indictment or such count of such indictment. (Already charged.)

II. That the finding by the jury that a conspiracy, such as is charged in the anti-trust indictment, or under any one count of the so-called anti-racketeering indictment, actually existed, does not dispense with the necessity of establishing independently, beyond a reasonable doubt, as to each and every one of the defendants, his actual participation in the conspiracy after knowledge of its existence. (Already charged.) 7233

III. That the only crimes with which the defendants herein are charged are that of violating the Federal Anti-Trust Act, commonly known as the Sherman Anti-Trust Act, being the Act of Congress approved July 2, 1890, and the Act of Congress approved January 18, 1934, commonly known as the Anti-Racketeering Act; and that the possible guilt of any defendant of other crimes, either State or Federal, has no bearing upon the issues in this case and may not be taken into consideration by the jury in determining the guilt or innocence of any defendant herein of the crimes charged in the indictments, or either of them. (Refused.)

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IV. That the defendants herein are not on trial for any of the alleged acts of violence, or threats of violence, as to which testimony may have been adduced at this trial; and that the only reason for the admission of any evidence of violence, or threats of violence, is that it might possibly bear on the question of whether or not any conspiracy existed to interfere with interstate commerce, as charged in the indictments herein. (Refused.)

V. That for any acts of violence, or threats of violence, or other illegal acts which may have been proven at this trial, other than is involved in the carrying out of any conspiracy charged in either of the indictments herein, the person committing the same can only be prosecuted under
7236 the statutes, Federal or State, governing the commission of such acts. None of the defendants are on trial herein for the commission of any such acts as such, and if the jury should come to the conclusion that the evidence establishes the commission of such illegal acts by any defendant herein, they cannot consider the same against any other defendant, nor against the defendant involved, except in so far as it may bear upon the question of his participation in any conspiracy charged in either of the indictments

herein, if such conspiracy has been established, or in so far as it may be evidence of the existence of such a conspiracy. (Already charged.)

VI. The defendants on trial herein being a labor union, and officers and members thereof, and the matters testified to in this trial involving or relating to labor disputes, or matters in dispute with relation to the performance of labor, you are hereby charged that by a special act of Congress, which is now the law of the land, there are special rules applicable to their case which are not applicable to other cases of conspiracy. The statute in question, passed especially for the protection of officers and 7238
members of labor unions engaged in labor disputes, is as follows:

> "No officer or member of any association or organization, and no association or organization participating or interested in any labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in; or actual authorization of, such acts, or other ratification of such acts after actual knowledge thereof.". (Refused.)

VII. The provisions of the said statute apply to each of the defendants herein and must be taken into consideration by you in determining its or his guilt under each of 7239
the indictments herein, and each count of the indictment under the so-called Anti-Racketeering Act. (Charged.)

VIII. I charge you that in determining the guilt or innocence of a particular defendant, under either of the indictments herein or any one of the counts of the so-called anti-racketeering indictment, it is not sufficient that you should come to the determination that he committed a par-

ticular act which may have aided in effectuating the conspiracy charged in such indictment or count, if you find that such existed, but you must also find that he was aware of the conspiracy and that he committed the act in question in furtherance of the objects or purposes thereof. (Refused.)

IX. I charge you that the statute heretofore referred to by me, and commonly known as the Norris-LaGuardia Act, must be taken into consideration by you both on the question as to whether or not any conspiracy existed, and also, if you find that a conspiracy existed under the anti-
7241 trust indictment, or under any of the counts of the anti-racketeering indictment, as to who participated therein. In this connection, I charge you that the theory upon which, under the law, conspirators after a conspiracy has been established, are made responsible for each other's acts is that of agency—each conspirator being considered the agent of all the others in accomplishing the purpose of the conspiracy. Ordinarily, agency may be inferred from facts and circumstances, but under the provisions of the act of Congress hereinbefore referred to, such agency cannot be presumed in this case from mere facts or circumstances, such as the relation of the parties to each other, and no such agency can be found by you except upon clear proof of actual participation in, or actual authorization of, the acts proven by the defendant whose guilt or
7242 innocence is under consideration, or upon the finding of ratification by him of such acts after actual knowledge thereof (Refused.)

X. I further charge you that the anti-trust indictment herein, and each of the counts of the anti-racketeering indictment, charges a conspiracy to which both the union and each individual defendant on trial were parties. You cannot, therefore, find any of the defendants herein guilty

under either the anti-trust indictment or any count of the anti-racketeering indictment unless you find that there was a general conspiracy such as is charged in such indictment, or count of the indictment, and that all of the defendants whom you find guilty were parties to the same. (Refused.)

XI. I specifically charge you that not only can you not find any of the defendants herein guilty for acts committed by them individually, separate and distinct from such conspiracy, but also that you cannot find them guilty by reason of several conspiracies which you may find to have existed. (Refused.)

XII. I specifically charge you that if you should come 7244
to the conclusion that certain defendants formed certain groups, either temporary or permanent, such groups acting independent of each other, you must not only acquit all those who did not participate in the activities of such groups, but you must also acquit those who did form such groups and participated in their activities, since the basis of the charge herein is one conspiracy common to all the defendants. (Refused.)

XIII. I charge you that you need not find that all the defendants named in the indictment, or all the defendants on trial, participated in the conspiracy charged in any indictment or in any count of an indictment in order to find any of the defendants guilty, but you must find all the de- 7245
fendants whom you do find guilty, guilty of the same conspiracy, and that must be such as is alleged either in the anti-trust indictment, or one of the counts of the anti-racketeering indictment. (Refused.)

XIV. I charge you that the anti-trust indictment charges only one conspiracy, and that, likewise, each of the counts of the anti-racketeering indictment charges the

7246 *Defendants' Requests to Charge.*

existence of but one conspiracy. You cannot therefore find any of the defendants guilty except upon a finding that those whom you find guilty were participants of one conspiracy, and you cannot find any of them guilty on the basis of a finding of several conspiracies under the anti-trust indictment or under any one of the counts of the anti-racketeering indictment. (Charged.)

XV. I charge you that the defendant labor union, Local 807, cannot be found guilty either under the anti-trust indictment, or under any of the counts of the anti-racketeering indictment, unless you are satisfied, beyond a reasonable doubt, by clear proof adduced at this trial, that its
7247 membership, as a whole, or its duly authorized governing body, either actually participated in, or actually authorized, the conspiracy charged in such indictment or count of indictment, or approved of the acts committed in pursuance to such conspiracy after knowledge of the same. (Charged.)

XVI. I charge you further that the said labor union, Local 807, is not liable for the acts of any of its members, no matter how numerous, or for the acts of any of its officers, unless either previously authorized or subsequently ratified by the union, or by the Government body within the scope of its authority. (Charged as modified.)

7248 XVII. In this connection, I charge you that there is evidence in this case that Local 807 had adopted a constitution and by-laws for the governance of its affairs, and that neither its executive board nor its officers or agents had authority except such as is given by the said constitution and by-laws, unless specifically authorized by a membership meeting duly convened in pursuance to, or under the provisions of, its constitution and by-laws. (Refused.)

XVIII. I charge you that the commission of any act which is, or may be, an interference with interstate commerce, is not a violation of the Sherman Anti-Trust Act unless it was committed as part of a conspiracy the object and purpose of which was to interfere with interstate commerce. (Refused.)

XIX. I specifically charge you that the commission of any act which is, or may be, an interference with interstate commerce, in pursuance to a purpose different and distinct from a purpose to interfere with intertsate commerce, is not a violation of the Sherman Act; and that no defendant here on trial can be found guilty under the anti-trust indictment for the commission of any such act. (Refused.) 7250

XX. I specifically charge you that trucking, or the transportation of merchandise within the City of New York, is not interstate commerce; and that any agreement or arrangement, or combination, or conspiracy, whose aim and purpose is to control or regulate the conditions under which trucking may be engaged in within the City of New York, is not a violation of the Federal Anti-Trust Laws. (Refused.)

XXI. I charge you further that in order that any person or organization may be found guilty of a violation of the Sherman Anti-Trust Law, not only must the object of the combination or conspiracy be the control or regulation of, or interference with, interstate commerce, but the actual interference must be direct and substantial. (Charged.) 7251

XXII. I charge you further that if you should find that the defendants, or any of them, were intending or purposing to control or regulate interstate commerce, have incidentally interfered with interstate commerce while attempting to control or regulate commerce or transporta-

tion within the City of New York, such finding cannot be made the basis of a finding of guilt under the anti-trust indictment herein, but that such finding of guilt can only be based upon a finding of a conspiracy the aim and object whereof was the control of interstate commerce. (Refused.)

XXIII. I charge you that by special enactment of Congress, labor organizations, and their officers and members, in so far as they are engaged in the regulation of terms and conditions of labor, are placed in a separate category with respect to our Federal Anti-Trust Laws; and that special rules and regulations govern the application of the Federal Anti-Trust Laws to labor organizations, and their officers and members engaged in the regulation of terms and conditions of labor, or engaged in disputes growing out of the attempt to regulate the terms and conditions of labor. (Refused.)

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XXIV. I charge you further that the expression "terms and conditions of labor" is not limited to wages to be paid for labor, or the hours of performance of labor, but includes the question of the organization of workers into labor unions. (Charged.)

XXV. I specifically charge you:

(a) That a labor union cannot be held to be a monopoly. (Refused.)

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(b) That a labor union, and its officers and members, have a right to strive for the control of the trade or industry in which they are engaged, in the sense of gathering together all of the workers engaged in that industry into one organization, thereby avoiding competition among themselves. (Refused.)

(c) That it is not a violation of the Federal Anti-Trust Laws for a labor union to strive to bring about, or to actu-

ally bring about, the control by such labor union or the entire trade or industry in which it operates, in so far as the wages, hours of labor, or other conditions of employment, are concerned. (Refused.)

(d) That the labor of a human being is not a commodity, within the meaning of the Anti-Trust Laws; and that there can be no restraint of trade or commerce, within the meaning of the Federal Anti-Trust Laws, in so far as the mere prevention of labor or work is concerned, unless the withholding of work or labor is intended to have an effect beyond the mere labor contract, and is part of a conspiracy to control the price of the commodity, created by such labor, after the same has gone into the market and become part 7256
of interstate commerce. (Refused.)

(e) That the indictment herein does not charge any intent on the part of the defendants to control the price of any commodity created by labor, as distinct from labor itself, and that there is no evidence in this case in any way tending to prove any conspiracy to control the price of any commodity. (Refused.)

XXVI. I specifically charge you that it is not a violation of the Sherman Anti-Trust Act for labor unions to arrange among themselves for a division of territory so that one labor union would not encroach upon the territory of another. (Charged.)

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XXVII. I also charge you that it is not a violation of the Sherman Anti-Trust Act for any labor union, its officers or members, to attempt to limit work within any given city or other territory, to members of a particular labor union. (Charged.)

XXVIII. I also charge you that it is not a violation of the Sherman Anti-Trust Act for members of a labor union

to refuse to work with, or alongside of, other workers who do not belong to any labor union. (Charged.)

XXIX. I also charge you that it is not a violation of the Sherman Anti-Trust Act for any labor union, its officers or members, to persuade members of other labor unions to refuse to work with, or alongside of, or to handle a commodity delivered by, persons who are not members of a labor union, or persons who, though members of a labor union, act in violation of, or contrary to, the rules and regulations of the labor union making the request. (Refused.)

7259 XXX. I also charge you that it is not a violation of the Sherman Anti-Trust Act for a labor union, its officers or members, to persuade merchants, or members of the public, not to purchase non-union-made goods, or to receive commodities delivered by non-union drivers, even though such goods or commodities are sold or delivered in interstate commerce. (Charged.)

XXXI. I specifically charge you that it is a legitimate object of a labor union to attempt to so classify the workers in the industry in which it operates as to best preserve the highest standard of wages obtainable in each case; and that to that end and purpose it may so classify or segregate the workers in the industry as to prevent one set or
7260 class of workers from acting in a manner which would injuriously affect the standard of wages of another set or class of workers. (Refused.)

XXXII. I specifically charge you that it is not a violation of the Sherman Anti-Trust Act for a labor union composed of teamsters or drivers to classify the workers in the said industry into city men and over-the-road men, and to segregate each class of work to a particular class of

employees, limiting each class to one such occupation, so that city men would not compete with over-the-road men and over-the-road men would not compete with city men.

XXXIII. I also specifically charge you that where, as in the over-the-road truck driving industry, there is danger that workers coming from a rural or suburban community, or from a community with a lower standard of wages, if allowed to work within the city where the labor union operates, would injuriously affect the standard of wages and/or the chances of employment of the members of the union, it is legitimate for the labor union, its officers and members, to seek to prevent such eventuality by limiting 7262
the driving of trucks within the city to its own members, or those who work only under the scale of wages demanded and obtained by the union. (Refused.)

XXXIV. I also further charge you that a labor union consisting of teamsters or drivers, and its officers and members, have a right, in order to protect their own standard of wages, to ask members of other labor unions, as well as merchants, not to receive merchandise delivered by non-union members, or by members of unions having a lower standard of wages, even though the merchandise in question is delivered in the course of interstate commerce. (Charged.)

XXXV. I charge you that the Sherman Anti-Trust Act 7263
is not concerned with means but with objects and purposes and that in order to find the defendants guilty under the anti-trust indictment herein you must find that the objects and purposes sought to be obtained by the defendants herein were such as are prohibited by the Sherman Anti-Trust Act, irrespective of the means used to obtain such objects and purposes. (Refused.)

XXXVI. I specifically charge you that if you find that the objects and purposes of the defendants herein were legitimate within the rules heretofore laid down by me, you cannot find the defendants guilty under the anti-trust indictment herein merely because they may have used improper or illegal means in the obtaining of those objects or purposes. (Refused.)

XXXVII. I specifically charge you that the use of illegal means for the accomplishment of their objects and purposes, whatever those may have been, must not be taken by you into consideration when you are engaged in determining the question as to whether or not there was a
7265 conspiracy to restrain trade or commerce, or interfere with the same, as charged in the indictment under the Sherman Anti-Trust Act herein. (Refused.)

XXXVIII. I specifically charge you that the question of the existence of a conspiracy as charged under the anti-trust indictment herein must be found by you as an independent fact, irrespective of the nature of the means employed by the defendant in attaining, or in attempting to attain, the objects of the said conspiracy; and that that applies to each and every one of the defendants, including the labor union defendant. (Charged.)

XXXIX. I specifically charge you that unless you
7266 find first that a conspiracy to restrain interstate commerce, within the rules heretofore laid down by me, that is to say, to achieve an object or purpose not permitted to a labor union, existed, you must find all of the defendants not guilty, since in the absence of such conspiracy any illegal act committed by any of the defendants is an individual act of his own, which is irrelevant to the crime charged in the anti-trust indictment herein. (Refused.)

XL. I specifically charge you that the Anti-Racketeering Act, while limited to interstate commerce because that is the only commerce with which the Federal Government can deal, is not a regulatory statute, intended to regulate interstate commerce such as the Sherman Anti-Trust Act but rather an ordinary criminal statute dealing with acts which are criminal per se. It does not attempt to punish violence or threats of violence as such, which are left to be dealt with by state law, but with obtaining of money from those engaged in interstate commerce by means of violence or threats of violence. (Charged as modified.)

XLI. I charge you that the use of violence, or the threat 7268
of violence, against persons engaged in interstate commerce or in connection with interstate commerce, other than for the purpose of obtaining or extorting the payment of money is not a crime under the Anti-Racketeering Act; and that it is not a crime under the Anti-Racketeering Act to conspire to commit violence, or the threat of violence, unless that is used as a means for the purpose or object of obtaining the payment of money or property, or some other valuable consideration in the nature of money or property. (Charged.)

XLII. I charge you in this connection that a "valuable consideration" as used in the statute may mean a contract for services to be paid for by money or property, except a contract for the payment by a bona fide employer of 7269
bona fide wages for actual work performed, which are expressly excluded by the law. (Charged as modified.)

XLIII. I charge you that the statute expressly exempts the payment of wages from the purview of its provisions, and that no one can be punished thereunder for the obtaining of wages, or for conspiring to obtain wages, by means of violence or threats of violence. (Refused.)

7270 *Defendants' Requests to Charge.*

XLIV. I also charge you that, like the anti-trust laws, the Anti-Racketeering Act specifically exempts labor unions, and their officers and members, in pursuit of the legitimate objects of labor organizations. The Anti-Racketeering Act is now part of the Criminal Code of the United States, being known as Section 420a to e thereof, and Section 420d provides:

> "That no court of the United States shall construe or apply any of the provisions of Section 420a to 420e of this title in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the
7271 legitimate objects thereof, as such rights are expressed in existing statutes of the United States." (Charged.)

XLV. I charge you that the expression, "existing statutes of the United States," includes the Clayton Act (which provides for the exemption of labor organizations, their officers and members, with respect to the Federal anti-trust laws) and also the so-called Norris-LaGuardia Act, which contains certain limitations upon the jurisdiction of the Federal courts to issue injunctions in case of labor disputes. (Charged as modified.)

XLVI. I specifically charge you that by reason of the
7272 provisions of Section 420a of Title 18 of the United States Code, with respect to "existing laws of the United States," the provisions with respect to the "clear proof" which is necessary to show authorization or ratification by a labor union, and its officers and members, before they can be convicted, applies to conviction under the Anti-Racketeering Act as well as to conviction under the anti-trust act. (Charged as modified.)

XLVII. I also charge you that by reason of the provisions of Section 420a of Title 18 of the United States Code those objects and purposes which would be considered legitimate objects and purposes of labor unions under the anti-trust act would also be legitimate objects and purposes of labor unions under the Anti-Racketeering Act. I therefore charge you that the defendants herein are exempt from prosecution under the Anti-Racketeering Act except for acts committed not in pursuance to any object which may be considered a legitimate object for a labor union to pursue within the rules which I have laid down in discussing the charge under the anti-trust indictment. (Refused.)

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XLVIII. I specifically charge you that it is not an offense under the Anti-Racketeering Act for anyone to obtain employment by the use or threat of violence if the intention is to actually work for the pay received, and to give an honest day's work for a day's wage. (Refused.)

XLIX. I specifically charge you that it is not the purpose of the Anti-Racketeering Act to prevent labor unions from attempting to obtain employment for their members, or to attain and maintain a high standard of wages for their members or in the industry; and that the use of violence or the threat of violence for such purposes, while punishable under the laws, is not punishable under the Anti-Racketeering Act. (Refused.)

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L. I charge you specifically that if the defendants agreed among themselves, or with others, to obtain employment for members of Local 807 by the means of violence or threats of violence, such agreement would not be a violation of the Anti-Racketeering Act, and therefore not a conspiracy within its purview, even though they had agreed to, or had actually used, violence or threats of violence in attaining their objects, since such violence or threats of

violence is illegal per se and punishable under the laws, State or Federal. (Refused.)

LI. I charge you in this connection that Local 807 is a bona fide labor union within the meaning of the Anti-Racketeering Act. (Refused.)

LII. I also charge you that the obtaining of employment for its members is a legitimate object of a labor union. (Charged.)

LIII. I also charge you that the attempt to maintain the standard of wages as shown by the contracts of Local
7277 807 offered in evidence by the Government is a legitimate object of a labor union; and you cannot find the defendants guilty, and the Anti-Racketeering Act, merely because the defendants had insisted on the maintenance of that scale of wages. (Refused.)

LIV. I specifically charge you that you cannot find the defendants are guilty under the Anti-Racketeering Act merely because they tried to obtain employment for themselves, or because they attempted to exclude outside teamsters or drivers from operating trucks within the City of New York. (Refused.)

LV. I further charge you that with respect to the con-
7278 spiracy charged in the indictment under the Anti-Racketeering Act, it makes no difference that those sought to be excluded from operating trucks in New York City were non-union men, or belonged to other local unions. (Refused.)

LVI. I specifically charge you that the Anti-Racketeering Act was not intended to operate as a regulatory statute as between labor unions or as between union labor or as between union labor and non-union labor but is what it

purports to be: a statute designed to prevent what is commonly called industrial racketeering, which means the obtaining of money, or something that is worth money, under the pretext of furnishing some service. (Refused.)

LVII. I charge you further that in order that any activity may come within the Anti-Racketeering Act, and the agreement for such activity be considered a "conspiracy" under that act, where actual labor is involved, it is insufficient that force or the threat of force be used, but it is of the essence of the crime defined by that statute that money be obtained for nothing, or practically nothing, and that labor performed or offered to be performed be practically worthless, so that its performance or offer or offer of performance be a mere pretext for the obtaining of the money. (Refused.) 7280

LVIII. I charge you that in order that the defendants herein may be convicted under any one of the four counts of the Anti-Racketeering indictment, you must find a conspiracy under such counts; and that in order to sustain the charge of conspiracy under any one of the counts under the Anti-Racketeering indictment, the proof must show not only that individual defendants obtained money without rendering adequate service, but that it was the aim and object of the conspiracy that all of the conspirators should obtain money without rendering adequate service therefor. (Refused.) 7281

LIX. I charge you that the contracts between Local 807 and various truckers offered in evidence by the Government, and now in evidence, show that it was the purpose of the union that its members should give adequate service for the wages received by them; and I hereby charge you that the agreement among any of its members having a contrary or other purpose or object would not be binding upon the defendant union. (Refused.)

7282 *Defendants' Requests to Charge.*

LX. I charge you that the conspiracies such as are charged in the anti-racketeering indictment cannot be pieced together by bringing together several, or even numerous independent acts on behalf of individuals or groups of individuals, but must be shown by clear proof to have been the very object and purpose of the conspiracy. (Refused.)

LXI. I further charge you that agreement or acquiescence by the union cannot be deduced from the mere failure of the union to prevent any acts by its members which might be considered violations of the Anti-Racketeering
7283 Act. (Charged.)

LXII. I further charge you in this connection that failure by individual officers of Local 807 to prevent infraction of the Anti-Racketeering Act by individuals cannot be made the basis of a finding of a conspiracy by the union to violate the Anti-Racketeering Act. (Refused.)

Charge of the Court.

The Court: Members of the jury, it is hardly possible for me to be as brief as I anticipated in presenting this case to your in accordance with my duty both in justice to the
7284 subject matter and in justice to the parties concerned, but I shall ask you to bear with me with that fortitude, with that patient consideration and intelligent and painstaking attention which I have observed you have borne in your demeanor throughout the six weeks of this trial.

Twenty-seven defendants are here on trial upon two indictments; each indictment is found against all of them and also against several other persons. Some of the defendants had not been apprehended when the case was

called for trial. A severance was then granted as to them and others. The indictments were dismissed as to five defendants, namely, Devery, Flaherty, Hickey, Brennan and Clarke before the taking of proof began, and as to eight, namely, Duffy, Flanagan, Mulqueen, Pelker, Pollock, Powers, Noonan and Macomber, at the close of the Government's case, and as to Katz at the close of the whole case, and a severance was also granted to Stolowitz before the defense began because he had become ill during the trial, and it was reported that his continued illness would otherwise interrupt the proceedings. So that there are remaining, as I have said, twenty-seven, and you may take, if you have not already done so, the list which was pre- 7286
sented to you at the opening of this case and you may indicate for your own information by striking out the names that I have given you and you have remaining those against whom this case is to be considered and determined.

I do not believe that the first five mentioned are on that list, because it was prepared after the disposition of the case was made as to them; but the others are. You will find them arranged alphabetically: Duffy, Flanagan, Mulqueen, Pelker, Macomber, Noonan, and then at the bottom Pollock, Powers and Katz.

One of the defendants is Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, and all of the other defendants named in both indictments except Noonan were alleged to have been members of that local. 7287

The Government charges a conspiracy in one count under the Sherman Anti-Trust Act and a conspiracy in four counts under the Anti-Racketeering Act.

Conspiracy is the only offense upon which the defendants are being tried.

The indictments, which you may take into the jury room with you, were both filed on May 31, 1938. They are

quite voluminous. I shall presently advert to them so far as I feel that it will be necessary in this charge.

Each of the defendants against whom this case proceeded to trial entered a plea of not guilty to each of these indictments and thereby put in issue the charges set forth and thus placed upon the Government the burden of establishing the material allegations made against him, and in the case of the union against it, in those indictments. Each count of the indictment stands as if it charged a separate offense. In other words, there are five separate offenses charged against each defendant. As to any one or all of these counts or offenses the jury may find any one of three
7289 verdicts: (a) it may find all of the defendants guilty; (b) it may find all of the defendants not guilty, or (c) it may find some of the defendants guilty upon one or more counts and others not guilty, but the jury must separately consider the evidence against each defendant and report a verdict of guilty or not guilty as to each defendant upon the single count in the first indictment and also upon each separate count in the second indictment.

Neither indictment is to be taken as evidence in any sense; it is a mere accusation which it is incumbent upon the Government to sustain by the proper measure of proof.

Every defendant in a criminal case is presumed at the outset to be innocent, and this presumption exists in his favor and abides with him for his proper protection until his guilt is established by the requisite measure of proof.
7290 The burden of proving guilt rests upon the Government and must be sustained by evidence which establishes guilt beyond a reasonable doubt. This burden rests upon the Government throughout the trial.

The term reasonable doubt means a doubt for which a good reason can be given in the light of all the evidence; it means a doubt which is substantial and not merely shadowy. It does not mean a doubt which is merely capricious or speculative. Neither does it mean a doubt born

of reluctance on the part of a juror to perform an unpleasant duty, or a doubt arising out of sympathy for a defendant, or out of anything other than a candid consideration of all of the evidence presented. A reasonable doubt does not mean beyond all doubt; it does not mean beyond any doubt; but it means such a doubt as would make a person of ordinary prudence and sensibility and decision in determining an issue of like concern to himself or herself pause or hesitate in arriving at his or her conclusion.

It is for the Court to state the principles of law which are applicable, and it is also for the Court to solve all questions with respect to the admission and rejection of evidence.

The jurors are the sole judges of the issues of fact and 7292
of the real truth of whatever is involved in those issues.

It is also a province of the Court to assist the jury insofar as this can be done by referring to subsidiary questions of fact and to the evidence or state of evidence bearing upon them. But the jury should regard all expressions of the Court in this connection as made for the purpose of aiding the jury and not of directing it. If the Court's expressions are not in accord with the jury's understanding of the evidence or its reasonable import, they are to be rejected and effect is to be given by the jury to its own understanding and conclusions; for in the last analysis, as I have said, the jurors are the sole and exclusive judges of all questions of fact. I might add that the jury is not to consider any statement made by any counsel for any party which is not in accord with the recollection of the jurors; 7293
and if there is any divergence of opinion among you or any uncertainty with respect to the testimony of any witness or witnesses, you have the right to request the Court to have the testimony of such witness or witnesses, or any portion thereof, read to you by the reporter. Of course, you may have all or any of the exhibits which have been received in evidence, and they will be furnished to you upon request,

but those only marked for identification are not in evidence and may not be had by you.

The jurors are the exclusive judges of the weight of each of the several items of evidence and are also the exclusive judges of the credibility of the witnesses. In passing upon the credibility of a witness and the weight to be given to his testimony, the jury may consider his appearance upon the witness stand, whether he testified with candor or otherwise, and his interest in the case.

It is the privilege of a defendant to testify as a witness if he so elects; if he does not choose to do so, as I indicated to you at the time of your selection, and which has been my
7295 practice to do in the trial of criminal cases since I have been on the bench, no unfavorable inference may be drawn by reason of his failure to take the witness stand; but when he does testify, his credibility is to be determined in the light of his interest, which usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony.

If you have formed any idea that any witness in this case is or was an accomplice, then I charge you that the testimony of an accomplice may be admitted in evidence, and if the jury deem him credible and his testimony worthy, you may give it weight accordingly. But the fact that he is an accomplice suggests that his testimony be examined with care. The same thing is true of the testimony of one
7296 who has been convicted of a serious public offense. The fact of his conviction does not of itself require the exclusion of his testimony, but does suggest that it be examined with care. If it be found worthy, it should be given weight accordingly.

Where it appears that any witness has wilfully testified falsely respecting a material matter, the jury may reject his testimony in its entirety, save as it finds corroboration or support in other evidence.

A verdict of guilty cannot be rested upon mere suspicion or mere probability, but must be found upon evidence and inferences reasonably or naturally arising from the evidence.

For two or more persons to conspire, confederate or combine together to commit or cause to be committed a breach of the criminal law of the United States is an offense of grave character which involves not only a plotting to subvert the law, but also the preparation of the conspirators for further criminal practices. It is almost always characterized by secrecy, rendering detection difficult and requiring much time for its discovery. Because of this the statute has made a conspiracy to commit a 7298
crime a distinct offense from the crime itself.

Let me interpolate at this point an example in order to illustrate that distinction: If I were to strike a person on the street I might be charged with assault or assault and battery, and such a charge would be what we know in the law as substantive offense, but suppose that I had made a combination with a number of other people to assault a number of persons, and together with the other persons with whom I had made that combination I was put on trial for conspiracy. The fact that I had assaulted somebody would be one crime, but a crime for which I would not be on trial in the conspiracy case. The crime in the conspiracy case would be whether I had entered into a combination or conspiracy with one or more persons for the purpose of committing a crime. If I had committed 7299
that crime that would be something which upon an indictment on the substantive count I might be called to account for some other time, but the only question for consideration in the trial and determination of the conspiracy charge is whether I conspired to commit a crime.

Where two or more act together to accomplish something unlawful, such as obtaining money or property from others by means of false pretenses or extortion, a con-

spiracy is shown even though there be no direct evidence of an express agreement. In short, a mutual implied understanding is sufficient so far as proof of a combination is concerned. The agreement is generally a matter of inference deduced from acts of the persons accused, done in pursuance of an apparent criminal purpose.

It is not necessary that all of the conspirators be acquainted, one with another. It may be that they have not been previously associated together. One conspirator may only know a few of the others, but where one who knows that others are acting together to violate the law, intentionally co-operates to further the object of the con-
7301 spiracy, he becomes a party to it.

When men enter into an agreement or conspiracy to accomplish an unlawful end they become agents of one another and the act of one in pursuance of the common purpose is deemed to be the act of all and to make all responsible for that act.

In the ordinary indictment for conspiracy it is necessary to allege overt acts as they are called for the purpose of indicating to the defendants the general nature of the proof to be offered in support of the charges contained in the indictment, and it is necessary that a jury should find that one or more of such overt acts in such cases has been established. But in cases under the Sherman Anti-Trust Act and the Anti-Racketeering Act, it is not necessary to allege overt acts as such. The allegations contained in
7302 each indictment are quite comprehensive, but, as I have already stated, they are not to be considered as evidence, and they must be established as facts to your satisfaction by the required measure of proof.

The jury will be composed of twelve citizens. While undoubtedly their verdict should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by a

comparison of views and by arguments among the jurors themselves. Each juror should listen, with a disposition to be convinced by the opinions and arguments of the others. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors who are equally honest and intelligent with himself or herself.

The trial of this case was begun on April 15th, and has therefore occupied approximately six weeks. It is therefore very desirable that the jury should agree upon a verdict if that can be done reasonably and consistently 7304
with the conscientious convictions of the members of the jury.

It is contended by counsel for the defendants that in no aspect of this case can any of the defendants be found guilty pursuant to the statutes under which the indictments are drawn and others relating thereto.

The struggle for maintenance of human liberty and human rights has gone on through the ages. The Magna Carta, the great charter of English liberties was granted by King John at Runnymede on the demand of the English Barons 725 years ago. It constitutes the basic principle of our Declaration of Independence and our present Federal Constitution.

During the course of this trial you may recall mention 7305
of the common law. That is a system of jurisprudence originating in custom or usage as distinguished from statutory law enacted by legislative function. The common law was brought to this country by the early English settlers and engrafted upon the thirteen original colonies when they became a nation. It has, to a very large extent, been modified in the march of progress as well as by the enactment of legislation.

At common law strikes, as we understand them, were illegal and even criminal, but a change in the common law, especially with respect to employer and employee has been effected in this country, and largely without the intervention of legislation; nor has it been due to the rejection of one principle and the adoption in its stead of another by the courts, but to a realization of the facts of industrial life. When centralization in the control of business brought its corresponding centralization in the organization of workingmen, new facts had to be appraised.

7307 Fifty years ago the Congress of the United States declared a specific policy with respect to combinations and conspiracies. Section 1 of the Sherman Anti-Trust Act, which became a law July 2, 1890, declared:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal; * * * Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

7308 The word "person" as used in that statute includes corporations and associations, and a labor union is an association within that meaning.

Considerable diversity of opinion developed in the interpretation of the applicability of the statute to various cases which arose after its enactment. Suffice it to say that twenty-five years later the Clayton Act, which became a law October 15, 1914, added what were intended to be clarifying provisions to the Sherman Act.

Section 6 of the Clayton Act reads:

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." 7310

Section 20 of the Clayton Act went into the definition of a policy and it provides in substance as follows:

"No restraining order or injunction shall be granted by any court of the United States in any case involving, or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of em- 7311
ployment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or

to employ any party to such dispute, or, from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violation of any law of the United States."

7313 In construing the Clayton Act, the United States Supreme Court assumed the normal objects of a labor organization to be legitimate, and declared that nothing in the anti-trust laws should be construed to forbid the existence and operation of such organizations or to forbid their members from lawfully carrying out their legitimate objects; and that such an organization shall not be held in itself, merely because of its existence and operation, to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it
7314 be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws.

On March 23, 1932, the Norris-LaGuardia Anti-Injunction Act became law and has been declared to be a rebirth or vitalization of Section 20, the policy-defining section of the Clayton Act, referring to the granting of injunctions in equity suits.

I shall quote rather than summarize this statute, because of the emphasis which has been given to it in the course of this trial. It is not long. Section 101 of the Code provides:

> "No court of the United States as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter." 7316

This is the public policy declared. Section 102:

> "In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited by this chapter, the public policy of the United States is hereby declared as follows:"

I stated it to you at the time of your examination as jurors, but I will say it again:

> "Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate 7317 and other forms of ownership associations, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and

designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

7319 The next section refers to what are called yellow dog contracts. Section 103:

"Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in Section 102 of this chapter, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

"Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement
7320 of hiring or employment between any individual, firm, company, association or corporation, and any employe or prospective employe of the same, whereby

"(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

"(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes or remains a member of any labor organization or of any employer organization."

Section 104 provides:

"No court of the United States shall have the jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute as these terms are herein defined from 7322
doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103 of this chapter," the one last read.

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or employment benefits or insurance, or other moneys or things of value; 7323

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by ad-

vertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103 of this chapter," the one last read.

7325

Section 105 provides:

"No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104 of this chapter."

7326. I have read these provisions to you. I do not consider that they have any great significance, except as I pointed out, the statute in the declaration of policy, Section 102 specifically states to what extent the jurisdiction and authority of the courts of the United States are limited.

Now I am going to call your particular attention to the provisions of the next section, 106:

"No officer or member of any association or organization, and no association or organization par-

ticipating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

That section has considerable significance with respect to this particular case, and in that respect I charge you the provisions of said statute, that is Section 106, which I have just read, apply to each of the defendants herein and must be taken into consideration by you in determining the guilt of the labor union or the guilt of each of the defendants under the indictment, and each count of the indictment under the so-called Anti-Racketeering Act. 7328

Further provision for the protection and advancement of the interest of workers is contained in the National Labor Relations Act, commonly referred to as the Wagner Law, but it does not seem necessary to further discuss these measures.

As I have pointed out, their intention was to further affirm and extend the rights and protection of labor and to insure against the abridgment of proper means for the legal maintenance and advancement of such rights. Certainly, these statutes do not go so far as to strike out the words "lawful" and "legitimate" from Section 6 of the Clayton Act. In any event, the Congress should, and has, declared 7329 what public policy in regard to the industrial struggle demand and has itemized it in two sections, one of the Clayton Act and the other of the Norris-LaGuardia Act, which I have already read to you.

The purpose of the law is to do justice, and the underlying principle in its administration, at least, should be common sense.

A labor union and its members may take any lawful means for the purpose of carrying out its legitimate objects, but neither a labor union nor its officers or members may employ means constituting a crime to accomplish its objects and purposes within the limitation of Section 106 of the Norris-LaGuardia Act which I have just pointed out to you and which I shall again later advert to.

Now we come to a consideration of the anti-racketeering act. There are four specific provisions, under each one of which a count of the second indictment has been drawn, and that act provides:

"Any person who, in connection with or in relation to any act in any way or in any degree affecting 7331
trade or commerce or any article or commodity moving or about to move in trade or commerce—

"(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employe; or

"(b) Obtains the property of another, with his consent, induced by wrongful use of force, or fear, or under color of official right; or

"(c) Commits or threatens to commit an act of physical violence or physical injury to a person or 7332
property in furtherance of a plan or purpose to violate subsections (a) or (b); or

"(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing act; shall, upon conviction thereof, be guilty of a felony."

The term "wrongful" means a violation of the criminal laws of the United States or any state thereof.

The terms "property", "money", or "valuable consideration" as used in this statute which I have just read to you shall not be deemed to include wages paid by a bona fide employer to a bona fide employee.

The term "trade in commerce" means between any states.

There is a further provision in that statute which I ask you to pay close attention to, and it reads:

"Any person charged with violating Section 420a"—that is what we know as the anti-racketeering law—"may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators; Provided: That no court of the United States shall construe or apply any of the provisions" of this act "in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States." 7334

Now, bona fide is a Latin term; "bona" means good, "fides" means faith: good faith. That you can take as the interpretation of the term bona fide." 7335

Let us now consider the indictments.

The Sherman Anti-Trust Act indictment charges that the defendants unlawfully conspired to restrain interstate commerce transported in over-the-road interstate trucking between various nearby states and the City of New York, and that such commerce was unnecessarily restrained and unreasonably burdened.

The Anti-Racketeering Act indictment charges in four counts that the defendants conspired:

A. To obtain by use of force, violence and coercion, money or other valuable considerations forbidden by the statute;

B. To obtain property of others with their consent, induced by wrongful use of force or fear, forbidden by the statute;

C. To commit and threaten to commit acts of physical violence or physical injury to pers s and property in furtherance of a plan to violate Sec-
7337 tion 2-c; and

D. To commit or threaten to commit acts of physical violence or physical injury to persons and property to violate sections 2-b and 2-c of the statute.

In other words, there are four specific provisions of this statute, each of which has a modification with respect to what constitutes a crime under each provision, and the indictment charges the commission of acts under each of the four sections.

As I have said, you may find in this case that all four sections were violated; you may find that none of them was violated, or you may find that one or more were violated and the others not violated.

7338 The conspiracy is claimed to have been formed on or about December 1, 1936, and, of course, cannot be deemed to have continued after the filing of the indictments on May 31, 1938.

My recollection is that there were ten contracts received in evidence. I have listed nine of them; one of them was dated prior to December 1, 1936; it was received on the question of intent. The contract between the union and Reliable Motor Lines was made on December 14, 1936. The

next contract in order of date was made March 16, 1937, with the Buglio Trucking Company of Vineland, New Jersey. The next followed on April 14, 1937, with Palmer Trucking Company of Millville, New Jersey. The next followed on April 19, 1937, with Lahn Motor Transportation of Bridgeton, New Jersey. The next was May 12, 1937, with Emily B. Libe, of Phillipsburg, New Jersey. The next was May 22, 1937, with LoBiondo Bros. of Bridgeton, New Jersey. The next was June 8, 1937, with John Zohlman, Bridgeton, New Jersey. The next was June 9, 1937, with R. E. Stiles Motor Freight Company, of Salem New Jersey; and the next was November 9, 1937, with H. Earl Pitzer of Biglerville, Pennsylvania. If I have omitted 7340
any you are entitled to have before you such contracts as are in evidence and you may examine them for yourselves.

You will do well to recall the testimony of each witness, referring to the circumstances related by him, prior to and at the time each such contract was signed, as well as the testimony offered by the defendants with respect thereto, and analyze the facts and determine the weight to be given to them and where the truth lies. Of course, there must be proof of intention. In fact, without it there could not be a conspiracy. You may consider the acts of any defendant for the purpose of aiding you in reaching a conclusion as to his intent, which is a state of mind that could hardly be otherwise ascertained.

There have been certain words and phrases used here, such as "tie up the job," "caught." Well, of course, we 7341
all know what the ordinary meaning of the word "caught" is and what the meaning of the words "tie up the job" is. That doesn't necessarily carry with it the implication that there was any force or violence, but it is for you to say whether such words and phrases were used in their ordinary sense, or whether from the circumstances as shown by the case they have a particular meaning. What the word "caught" may signify or what the person who used

it may have intended that it should signify and what the phrase "tie up the job" may signify, or what may have intended it should signify depends upon circumstances, and it is for you to find from the evidence what those circumstances were and what meaning was intended to be given to the word or the phrase as the case may be by the person who used it.

I have been rather rigid, perhaps, in the exclusion of testimony offered by the Government, but I have been actuated by a desire to confine the proof to the issues, not to have this case unduly and unnecessarily prolonged, and also to avoid any possible prejudice to the defendants, which they should not bear, and while I have excluded a 7343 line of testimony upon which the defendants made an offer of proof, I did that because I firmly believed that it was neither relevant, material nor germane, and, of course, if I am wrong the defendants are protected by an exception to review my action.

This case does not seem to be difficult, but rather, the issue is clearly defined at least, and I think it should be possible for you to return a determination with unanimity upon the facts. Has a conspiracy been established by the required measure of proof? That is, beyond a reasonable doubt, as I have defined it. If not, you must acquit the defendants. If, on the other hand, you are satisfied that the Government has sustained its burden as to the material allegations of the indictments, or any one of them, alleg- 7344 ing a conspiracy, you will then proceed to determine which of the defendants conspired or became parties to the conspiracy.

Before you may find any of the defendants guilty you must be satisfied of the guilt of each such defendant beyond a reasonable doubt.

It is not necessary for the Government to prove that all of the defendants were parties to the formation of the conspiracy. All who participated in any phase of the conspiracy with guilty knowledge thereof are liable.

Some of the evidence offered against the defendants is circumstantial. Circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the fact exists which is sought to be established. This is legal evidence and a jury must act upon it as if it were direct, when it is satisfactory beyond a reasonable doubt.

The Government has offered evidence tending to show that various persons were threatened or injured by unknown persons. If the jury find that there was a conspiracy entered into by all or any of the defendants and if the jury believe the testimony of witnesses called by the 7346
Government that they were threatened or injured by unknown persons, the jury may consider that evidence, and if you find that the violence of unknown persons was in furtherance of that conspiracy then you may consider the evidence of violence of unknown persons as going to show the nature of that conspiracy.

Evidence has been introduced that one or more defendants threatened harm to persons if they should testify in this case for the Government. Such evidence is not to be taken by the jury as a part of the proof of the conspiracy, but solely against the defendant or defendants who may have made such threat or threats.

In considering this evidence you may draw from it an inference that any particular defendant or defendants who made such threats exhibited by his threats a consciousness 7347
of guilt of the crime with which he is charged.

Before you can find any of the defendants guilty upon all or any of the four counts in the second indictment, you must determine whether the charges fall within the immunity provision of the Anti-Racketeering Act which, I repeat, provides: "The term 'property,' 'money' or 'valuable consideration' used in Section 420 of this title shall not be deemed to include wages paid by a bona fide em-

ployer to a bona fide employe." That means that the jury may not find the defendants guilty on any count of the Anti-Racketeering Act indictment if the money which they are charged with having obtained from truck owners through the use of force and violence or threats of force and violence was paid as wages, and if the defendants who received the money were bona fide employees and the truck operators who paid the money were bona fide employers.

The question whether the sums of money paid by the truck operators to the defendants were wages paid by a bona fide employer to a bona fide employee is to be determined by the jury according to the relationship exist-
7349 ing between the operators and such defendants. If the jury find that the sums of money paid by the truck operators were not wages so paid in return for services performed by such defendants, but were payments made by the operators in order to induce the defendants to refrain from interfering unlawfully with the operation of their trucks, then the sums in question may not be regarded as wages paid by a bona fide employer to a bona fide employee.

The fact that any defendant may have done some work on a truck of an operator is not conclusive as to whether payments received by such defendants were wages; the jury may consider the performance of work by a defendant as evidence of the nature of the relationship between the defendant and the operator as establishing the status of a bona fide employer and a bona fide employee. If,
7350 however, what the operator was paying for was not labor performed but merely for protection from interference by the defendants with the operation of operator's trucks; the fact that a defendant may have done some work on an operator's truck is not conclusive.

The jury may consider the state of mind of any defendant as to whether he considers himself as being paid for work done, or for refraining from interfering with the operator's trucks.

The jury may consider the extent of the work done in the circumstances and the willingness or the unwillingness of the defendant in each instance to do the work for which he claims to have been hired.

All of these are factors which may be taken into consideration in determining whether or not the sums of money paid by the operators to the defendants were wages paid by a bona fide employer to a bona fide employee. The fact that certain payments were paid pursuant to a contract between certain operators and the defendant union is not conclusive as to whether these payments were wages, that is, bona fide wages, or not.

The jury may consider the existence of the contract as some evidence of the nature of the relationship existing between the operator and the defendants. 7352

The four separate counts in the Anti-Racketeering indictment, as I have said, are based upon the four subdivisions of the statute previously mentioned.

The first two elements of all of the offenses are that there must be a conspiracy and that interstate commerce be affected, and the other elements of each of these counts or charges are as follows: As to Count No. 1, that the conspiracy was for the purpose of obtaining by the use of force, violation or coercion, or the threat to use force, violence or coercion, the payment of money. As to the second offense, that it be for the purpose of obtaining the property of another, as distinguished from the money, with his consent, which consent was induced by the wrongful use of force or fear. 7353 As to the third offense, that the conspiracy involved the commission, or the threatened commission of acts of physical violence, or physical injury to a person or property in furtherance of the plan or purpose to obtain the payment of money by the use of force, violence or coercion, or threats of force, violence or coercion. And the elements of the fourth offense, in addition to the two that I have mentioned, conspiracy and interference

with interstate commerce, are that it involves the commission or threatened commission of acts of physical violence or physical injury to a person or property, and that these acts of violence be in furtherance of a plan to obtain the property of another with his consent, which consent was induced by wrongful use of force or fear.

Before you may find the defendants guilty of any of these offenses, you must determine that the defendants do not fall within the immunity clause which I have previously referred to, and that is that the moneys which they were paid and received were bona fide wages of a bona fide employer to a bona fide employee.

7355 Before you can convict the defendants on counts 2 and 4 of the anti-racketeering indictment, you must also give heed to the immunity provision which provides that the term "wrongful" means in violation of the criminal laws of the United States or of any state. This provision indicates that the force or fear used to induce the consent of another to give his property to a defendant must be in violation of the criminal laws of the United States or of a state of the United States.

As I have said, you are not determining the guilt of a defendant by a violation of the criminal laws of the United States or of a state, but you are considering his acts which might be such a violation for the purpose of determining whether that constituted a part of this conspiracy. If you find the elements of the crime charged in counts
7356 2 and 4 and further find that the force, or threats of force employed were unlawful, then you may convict such of the individual defendants as you find to have been in the conspiracy on those counts.

The elements of the crime charged in the Sherman anti-trust indictment are:

1. That the defendants conspired to stop and interfere with interstate trucks, and

2. That this interference with interstate trucks did not constitute the lawful carrying out of the legitimate objects of the labor organization.

To find that Local 807 is guilty upon the indictment under the Sherman Anti-Trust Act, it must be established beyond a reasonable doubt that the officials of the union knew of and accepted the benefits of the acts committed by individual defendants or other co-conspirators in bringing about the execution of contracts in evidence.

In that connection you may take into consideration what evidence, what credible evidence, in this case that you believe came to the knowledge of the officers of the union in conjunction with the appearance before an officer of the 7358
union of any of these truck owners for the purpose of executing a contract. In other words, you may consider the acts of the officers of the union providing you find that they had knowledge of what may have preceded the execution of the contract in determining whether there was a ratification; and in order to find the union guilty under the Anti-Racketeering Act you must be satisfied by the same measure of proof, that is, beyond reasonable doubt, that the union through its officials either directed the acts of the individual defendants or that it acquired knowledge of them—that is the union as such—and ratified and confirmed them. Such ratification need not be in the form of a resolution adopted at a regular meeting of the association, but it may be determined from the circumstances as disclosed by the evidence in this case as to knowledge, 7359
participation and reception of benefits.

The violation of the Sherman Anti-Trust Act is a misdemeanor, and a violation of each count of the Anti-Racketeering Act is a felony. Insofar as the two indictments and the several counts of the second indictment involve matters which are much the same, this near identity is a matter for the Court to consider in fixing punishment and is not for the jury to consider in determining the guilt or innocence.

As a final word let me say to you that this case is an important case, important to the Government because it is the duty of the Attorney General, in this instance through the United States Attorney, to prosecute alleged violations of these statutes; it is an important case so far as the defendants are concerned because it is a principle of American jurisprudence that it is better that any number of guilty persons should go free than that an innocent person should suffer. So the important duty resting upon you is to determine whether the Government has established its case and if so, as to whom, and to be satisfied in your minds that as to any person against whom you may
7361 feel disposed to bring in a verdict of guilty in this case, that such guilt has been established by the required measure of proof, that is, beyond a reasonable doubt; not beyond any doubt, not beyond all doubt, as I have said, but beyond such a doubt as would make you pause or hesitate under like conditions to reach a determination affecting your own selves.

The duty which devolves upon jurors is no less important than that which devolves upon the Court. You and I are branches of the same service. We serve here under obligation to do our duty. That duty we must do without fear or favor, without prejudice or sympathy, but to strive to render substantial even-handed justice between the Government as the complainant upon the one side and the defendants upon the other, and with that the case rests in
7362 your hands.

Now, counsel may, if they wish, take their exceptions to the charge.

Mr. Boudin: If your Honor please, I respectfully except to your Honor's charge as a whole, and particularly to that portion of your Honor's charge in which your Honor, in instructing the jury on the proof of conspiracy, stated that no direct evidence of conspiracy is necessary; and I ask your Honor to charge specifically that that rule

is modified in this case by the requirement of Section 6 of the Norris-LaGuardia Act as to clear proof. In other words, while the evidence need not be direct, it must nevertheless be clear.

The Court: Well, I hold that "clear proof" and "beyond a reasonable doubt" are one and the same thing.

Mr. Boudin: I respectfully except.

I also respectfully except to that part or portion of your Honor's charge in which your Honor stated or instructed the jury that at common law strikes were illegal. I also ask your Honor——

The Court: Do you question that statement that they were illegal? 7364

Mr. Boudin: I respectfully do, if your Honor please. And I also ask your Honor to specifically instruct the jury that there is no such thing as a common law in the United States, and that no one can be convicted in a Federal court except in pursuance to a statute.

The Court: That is true; and I so charge.

Mr. Boudin: And I also respectfully except to that part or portion of your Honor's charge in which your Honor charged in substance, in form or in substance, that the provisions of the Clayton Act and other laws of the United States protecting unions and their officers and members in the pursuit of the legitimate objects of a labor union, is modified by the fact that they may not use means constituting a crime; and I respectfully ask your Honor to charge in that connection that that simply means that they would be amenable or, rather, liable for those crimes under the proper acts relating thereto and not under such acts as the Anti-Trust Act, for instance. 7365

The Court: I decline to charge other than I have already charged.

Mr. Boudin: I also respectfully except to that part or portion of your Honor's charge in which your Honor instructed the jury as to the meaning of the term "bona

fide" as contained in this Anti-Racketeering Act, not because that instruction was incorrect insofar as the meaning of "bona fide" is concerned, but merely because it may be misleading to the jury; that they may think it means bona fide with respect to good faith with respect to a particular act, rather than the character of the union as a whole; and I, therefore, respectfully ask your Honor to specifically charge the jury in that connection that the expression "bona fide" or "good faith" means to the general character of the union and not with respect to any particular act.

The Court: No, "bona fide" as I defined it refers to the
7367 question of whether a man is a bona fide employee or a bona fide employer.

Mr. Boudin: Well, you charged it twice. I think your Honor also referred with respect to the character of the union. I may be mistaken, but I so understood at the time.

The Court: I did charge that the United States Supreme Court held that a union is presumed to be organized for lawful and legitimate purposes. That is bona fide, isn't it?

Mr. Boudin: Well, I shall not press this now since there is a specific request that I have made which I assume from your Honor's statement, your Honor will pass upon it separately, in which I shall ask for a specific charge that Local 807 is a bona fide union under the act in
7368 question, the Anti-Racketeering Act.

I also respectfully except to that part or portion of your Honor's charge to the jury in which your Honor charged the jury, in form or substance, that they may take into consideration acts or purported acts of some unknown persons.

I also respectfully except to that part or portion of your Honor's charge in which your Honor charged the jury that under certain circumstances the payment for

labor may not be considered payment of wages within the meaning of the Anti-Racketeering Act.

I specifically except also to your Honor's reference to the contracts in evidence in connection therewith.

And I also respectfully except to that part or portion of your Honor's charge in which your Honor charges, in form or substance, that the jury may find the defendant Local 807 guilty both under the Anti-Trust Act and under the Anti-Racketeering Act if they should find that the contracts entered into by the union were entered into with knowledge of the facts or circumstances under which they have been obtained by members of the union; that is, the acts which preceded the appearance——

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The Court: Provided the jury find that those acts amount to a conspiracy so far as the individual defendants are concerned.

Mr. Boudin: Well, I except to that also as being insufficient to correct the error which I had thought your Honor had made.

The Court: Any other exceptions?

(No response.)

The Court: Now, with respect to the defendants' requests to charge:

No. 1 I feel has already been charged, but counsel may except, if they choose, insofar as it has not been charged, and the same is true with respect to No. 3 and No. 5.

Mr. Boudin: I take it your Honor is giving us an exception as you are going alone.

7371

The Court: I am telling you you can take it.

Mr. Boudin: Well, we do take it, your Honor.

The Court: I am not acting as counsel for either side.

Mr. Boudin: Well, your Honor, we except.

The Court: Requests Nos. 3 and 4 refused.

Mr. Boudin: Exception.

The Court: No. 6 refused.

Mr. Boudin: Exception.

The Court: No. 7 has already been charged.

No. 8 refused.

Mr. Boudin: Exception.

The Court: No. 9 refused.

Mr. Boudin: Exception.

The Court: No. 10 refused.

Mr. Boudin: Exception.

The Court: No. 11 refused.

Mr. Boudin: Exception.

The Court: No. 12 refused.

Mr. Boudin: Exception.

The Court: No. 13 refused.

7373 Mr. Boudin: Exception.

The Court: No. 14 I feel has already been charged, but you may except insofar as I have not charged it in the language as precisely proposed by you.

Mr. Boudin: We do except.

The Court: No. 15 I decline to charge.

Mr. Boudin: Exception.

The Court: No. 16 I feel I have already charged, and you may except to any extent that my charge does not conform to your request.

Mr. Boudin: We do so.

The Court: No. 17 refused.

Mr. Boudin: Exception.

The Court: No. 18 refused.

Mr. Boudin: Exception.

7374 The Court: No. 19 refused.

Mr. Boudin: Exception.

The Court: No. 20 refused.

Mr. Boudin: Exception.

The Court: 21. I charge the jury that in order that any person or organization may be found guilty of a violation of the Sherman Anti-Trust Law, not only must the object of the combination or conspiracy be the control or regulation of, or interference with, interstate commerce, but the actual interference must be direct and substantial.

No. 22 is refused.

Mr. Boudin: Exception.

The Court: And 23.

Mr. Boudin: Exception.

The Court: 24. I charge the jury that the expression "terms and conditions of labor" is not limited to wages to be paid for labor, or the hours of performance of labor, but includes the question of the organization of workers into labor unions.

No. 25 is refused.

Mr. Boudin: Exception.

The Court: And its several subdivisions.

Mr. Boudin: Exception. 7376

The Court: 26. I do not see the materiality of it, but I will charge it.

I charge the jury that it is not a violation of the Sherman Anti-Trust Act for labor unions to arrange among themselves for a division of territory so that one labor union would not encroach upon the territory of another. But I do not recall any proof that that was done in this case.

Mr. Boudin: I respectfully except to your Honor's statement as to the state of the proof in the case in connection with 26.

The Court: Well, the jury will be the judges as to whether there is any proof or not.

No. 27 I decline to charge.

Mr. Boudin: Exception. 7377

The Court: And 28 I feel I have already covered, and you may except.

Mr. Boudin: I respectfully except to your Honor's failure to charge in the language requested.

The Court: All right.

29 refused.

Mr. Boudin: I except.

The Court: I will charge 30.

I charge the jury that it is not a violation of the Sherman Anti-Trust Act for a labor union, its officers or members, to persuade merchants, or members of the public, not to purchase non-union-made goods, or to receive commodities delivered by non-union drivers, even though such goods or commodities are sold or delivered in interstate commerce.

No. 31 is refused.

Mr. Boudin: Exception.

The Court: No. 32 is refused.

Mr. Boudin: Exception.

The Court: No. 33 is refused.

7379 Mr. Boudin: Exception.

The Court: 34 I will charge.

A labor union consisting of teamsters or drivers, and its officers and members, have a right, in order to protect their own standard of wages, to ask members of other labor unions, as well as merchants, not to receive merchandise delivered by non-union members, or by members of unions having a lower standard of wages, even though the merchandise in question is delivered in the course of interstate commerce. That is the law.

35 is refused.

Mr. Boudin: Exception.

The Court: And 36 and 37

Mr. Boudin: Exception to 36 and exception to 37.

The Court: 38. I will charge the jury that the ques-
7380 tion of the existence of a conspiracy as charged under the anti-trust indictment—which I presume means the Sherman Act—must be found by them as an independent fact, irrespective of the nature of the means employed by the defendant in attaining, or in attempting to attain, the objects of the said conspiracy; and that that applies to each and every one of the defendants, including the labor union defendant.

39 is refused.

Mr. Boudin: Exception.

The Court: No. 40——

Mr. Boudin: Exception.

The Court: I am charging that.

Mr. Boudin: I beg your Honor's pardon.

The Court: I am charging so much of it as requests that the Anti-Racketeering Act does not attempt to punish violence or threats of violence as such, which are left to be dealt with by state law, but with obtaining of money from those engaged in interstate commerce by means of violence or threats of violence.

41. I will charge the jury as requested, that the use 7382
of violence, or the threat of violence, against persons engaged in interstate commerce or in connection with interstate commerce, other than for the purpose of obtaining or extorting the payment of money is not a crime under the Anti-Racketeering Act; and that it is not a crime under the Anti-Racketeering Act to conspire to commit violence, or the threat of violence, unless that is used as a means for the purpose or object of obtaining the payment of money or property, or some other valuable consideration in the nature of money or property.

No. 42 I will charge with an amendment.

"Valuable consideration" as used in the statute may mean a contract for services to be paid for by money or property, except a contract for the payment by a bona fide employer to a bona fide employee wages for actual 7383
work performed, which are expressly excluded by the law.

Mr. Boudin: I respectfully except to the modification.

The Court: 43 is refused.

Mr. Boudin: Exception.

I think your Honor charged 44.

The Court: I charged 44. I think also I charged 45 in substance.

Mr. Boudin: Well, I respectfully except insofar as your Honor has not charged in the language requested. I may frankly say I am doing it for protection. I am not in a position to read it.

The Court: Nobody can find fault with counsel protecting the interests of his clients.

I will charge 46.

Under the provisions of the Anti-Racketeering Act with respect to "existing laws of the United States," the provisions with respect to the "clear proof" which is necessary to show authorization or ratification by a labor union, and its officers and members, before they can be convicted, ap-
7385 plies to conviction under the Anti-Racketeering Act as well as to conviction under the Anti-Trust Act.

I think I have already said it, though perhaps not in your language.

I have already covered, substantially, 47; and I refuse to charge 48 and 49 and 50 and 51.

Mr. Boudin: I respectfully except to your Honor's failure to charge 47 in the language requested, and also to your Honor's failure to charge 48, 49 and 50.

The Court: And 51.

Mr. Boudin: And I also except to that, if your Honor please.

The Court: I will charge 52.

The obtaining of employment for its members is a legitimate object of a labor union.

7386 I refuse to charge 53 and 54 and 55 and 56 and 57.

Mr. Boudin: I respectfully except to your Honor's failure or refusal to charge 53, 54, 55, 56 and 57.

The Court: And 58 and 59 and 60.

Mr. Boudin: And I also except to your Honor's refusal to charge 58, 59 and 60.

The Court: I will charge 61.

Agreement or acquiescence by the union cannot be deduced from the mere failure of the union to prevent any

acts by its members which might be considered violations of the Anti-Racketeering Act, but it is a circumstance which the jury may consider.

Mr. Boudin: I respectfully except to the modification or addition.

The Court: 62 is refused.

Mr. Boudin: Exception.

Mr. Cahill: If your Honor please, Mr. Boudin has taken exception to your Honor's charge as a whole, and I protest and ask that Mr. Boudin be required by your Honor to particularize and specify any further exceptions that he wishes to take.

The Court: Well, he may do so if he likes. 7388

Mr. Cahill: And that he be not granted an exception to the charge as a whole.

Mr. Boudin: Mr. Cahill knows that if the exception——

The Court: Just a moment. Never mind about what Mr. Cahill knows. Mr. Cahill has made an objection, and if there are any rights you want to preserve under that objection, you may take the steps that you deem advisable to protect those rights.

Mr. Boudin: Did your Honor pass on 63? I did not hear your Honor.

The Court: There is no 63.

Mr. Boudin: I think that is so. Your Honor is right. I think there was a mistake.

The Court: Well, I am glad to be right in the end.

Mr. Boudin: Well, your Honor has been right a long 7389
time. Your Honor has made a long charge and there were only few exceptions.

The Court: My understanding of the law is that it does not avail anyone to except generally unless the attention of the Court is specifically called to the nature of the exception so that the Court has the opportunity to correct any error that it may have made.

Is there anything further?

Mr. Boudin: No, nothing further as far as I am concerned.

The Court: All right. Now the clerk will provide the jury with pad and pencil and envelopes so that they may, if they choose to do so, communicate with the Court. I have here two printed copies of the indictment. I would like to know if counsel for the defense have seen these printed copies, and if in the event the jury desire copies of the indictments, if it is agreeable that those particular copies may be used. I would not want to send in the original indictment because it contains notations which have been made from time to time by the clerk, and are no
7391 part of the indictment so far as the jury are concerned.

Mr. Murray: That is acceptable to the defendants, your Honor.

The Court: Now the clerk will presently administer an oath to the bailiff, and I do not know how long ago that oath was prepared or by whom, but I object to it insofar as it requires the bailiff to keep the jurors without food or drink. When you feel that you want to go to lunch, you let the bailiff know, and the Court will make an order to conform to the circumstances.

Now I would like to ask if there is any member of the first twelve jurors impaneled who does not feel in a state of complete good health and able to withstand whatever length of time may be required for the consideration of this case?

7392 (No response.)

The Court: Then I will excuse from further service alternate jurors 13 and 14, and I would like to have both of them, if they will, present themselves after the jury has retired after the administration of the oath to the bailiff.

(The marshal was sworn.)

The Court: The jurors may retire.

(The jury retired at 12.50 P. M.)

(At 4.40 P. M. the jury returned to the court room and the following proceedings were had):

The Court: Call the roll.

(The roll was called and all defendants were present.)

The Court: The Court has received the following communication from the foreman of the jury:

> "Would it be possible for the jurors to obtain copies of the Sherman and Anti-Racketeering Acts, and would your Honor clarify for us the meaning of the second and fourth counts of the anti-racketeering indictment in respect to 'conspire to obtain the property of others'?" 7394

Well, in the first place, it would be possible to furnish you with copies of the Sherman and Anti-Racketeering Acts, but not very practical. In the first place, these statutes contain many provisions that have no relation whatsoever to this case. The copy that I have available here contains annotations or decisions which have been rendered by the courts from time to time, classified under each separate section; and I feel that it would be very confusing to you if you had these books before you, without practical experience to follow and find just what you want. Moreover it is the duty of the Court to inform you with respect to the law, and the Court will be very glad to inform you upon any particular phase of the law with respect to which you indicate that you desire enlightenment. 7395

So far as the clarification of the second and the fourth counts of the anti-racketeering indictments are concerned, there may be some confusion in your mind as between the provisions of the statute which I read to you and the terms of the indictment itself as drawn under the statute; and I gather that from your inquiry, "in respect to con-

7396 *Communications from Jury and Charge.*

spire to obtain the property"—which you underscored, Mr. Foreman—"of others."

In the first place, in this instance, "property" as "money" and "other considerations of value," are intended to exclude the payment by a bona fide employer to a bona fide employee for services rendered. In other words, if what was paid by a trucker and received by a defendant were bona fide wages, then that is all there is to this case. On the other hand, if it does not come within the category of bona fide wages, then it may be money, property, or any other thing of value which the trucker parted with and which one or more of the defendants received.

7397 I will try to make this a little clearer to you than the language of the indictment itself. I pointed out to you that as to each count under the racketeering indictment there are certain elements of the offenses charged, and that as to all of them, the first element was that there must be a conspiracy, and as to all of them, the second element was that interstate commerce be affected.

I will give you the third element with respect to each of the four counts in the anti-racketeering indictment: As to Count 1, if you find that any or all of the defendants were parties to a conspiracy to interfere with the interstate movement of over-the-road trucks, and to obtain by the use of force, violence or coercion, or threats to use force, violence or coercion, sums of money from over-the-road truck operators, then you have found all of the elements of the
3798 crime charged in the first indictment, provided you do not find that the payment of money was the bona fide wages of a defendant employee from a bona fide employer.

Now, as to the second count: If you find that any or all of the defendants entered into a conspiracy, which conspiracy interfered with interstate commerce, and which was for the purpose of obtaining money from truck operators with their consent, which consent was induced by the wrongful use of force or fear, then you have found every

element of the crime charged in the second count, provided, however, that the payment of such money were not bona fide wages to a bona fide employee by a bona fide employer. That is the second count, and that is one of which you particularly inquired about.

Now, the third count: If the jury find that any or all of the defendants entered into a conspiracy, which conspiracy interfered with interstate commerce, and which conspiracy included the commission or threatened commission of acts of physical violence or physical injury to a person or property in furtherance of a plan to obtain payment of sums of money from over-the-road truck operators by the use of force, violence or coercion, or threats of force, violence or coercion, then you have found every element of the crime charged in the third count again provided, however, that such money paid to any of the defendants did not constitute bona fide wages to a bona fide employee by a bona fide employer. 7400

As to the fourth and last of those counts under the anti-racketeering indictment, I reiterate as follows: If the jury find that any or all of the defendants entered into a conspiracy, which conspiracy interfered with interstate commerce, and which conspiracy included the commission or threatened commission of acts of physical violence or physical injury in furtherance of the plan to obtain money from truck operators with their consent, which consent was induced by the wrongful use of force or fear, then the jury has found every element of the crime charged in the fourth count, provided, as I have already stated, with respect to the "bona fides" of the wages. 7401

In other words, the element in Count 2 and Count 4 is that the money was obtained from the truck operators with their consent, but which consent was induced by the wrongful use of force or fear, whereas in Counts 1 and 3 it was the conspiracy to obtain, to interfere with interstate movements of over-the-road trucks, and obtain by the use of

force, violence or coercion, or threats of the use of force, violence or coercion, sums of money from the over-the-road truck drivers. Thus, in Counts 1 and 3, that element of consent on the part of the trucker, but which consent was obtained under the circumstances I have stated, does not appear as it does in Counts 2 and 4.

Have I made that point clear?

If there is anything further you want to know about the Sherman Act or the Clayton Act or the Norris-La Guardia Act or even the Wagner National Labor Relations Act, I will be glad to make that information available here; but, as I said, to send the books into you, if I were
7403 to bring out the original statutes which I have upstairs you would find each one of them as large as the Webster's Dictionary, and you would have some difficulty in selecting, unless your attention could be particularly directed to the section that you wanted, the particular section or sections that had any application here.

Is there anything further that the jury want now? Do you wish to return to your jury room and ascertain whether the information which I have now given you complies with the request of your foreman?

The Foreman: A point was brought up, your Honor—you explained that a labor union, as an association, came under the Sherman Act even though it is not a trust.

The Court: Yes.

The Foreman: And that is one point.

7404 The Court: I will explain that to you: It has been held by the United States Supreme Court that both a corporation and an association come within the provisions of the Sherman Act, and that a labor union, being an unincorporated association, has the same relation in the definition of "person" as a corporation or as an individual. There are, as I pointed out to you, certain circumstances under which a labor union is exempted from the provisions of the Sherman Act; but as I have heretofore indicated,

neither the Sherman Act nor the Clayton Act, nor the Norris-LaGuardia Act, with the exception of that Section 106, which I read to you, and which I will read again if you want it—in my opinion of the law, exempts a labor union, where there is a charge of conspiracy, which is a violation of the criminal statute, if the evidence in the case satisfies you that there is a conspiracy.

Have I made that point clear?

Now I am going to make one other suggestion to the jury: Some time before you reach your final determination here, since you have so many to deal with, 27 altogether, the clerk will have ready for you a table which will list all of the defendants alphabetically, and then it will 7406
provide a series of columns, one under the Sherman Anti-Trust Act and four columns under the Anti-Racketeering Act, one column for each count under that act; so there will be five columns; and when you come to make your disposition of the case, if you want this particular form which the clerk will make available to you, then you can enter opposite the name of each defendant on each count the final disposition of the case that you make as to each defendant by writing in the space provided for that purpose the word "guilty" or "not guilty" as you determine the result should be as to each individual defendant, and the union, upon each separate count which is now before you for consideration and determination.

The Foreman: This note (indicating) says——

The Court: Well, will you pass it up and let me see 7407
what it is?

(The foreman handed up a note to the Court.)

The Court: Well, Juror No. 8 submits this inquiry:

"If a union official knows of an act of violence of a member, is the union a partner in the conspiracy?"

That is a circumstance to be taken into account in determining, under the instructions which have been previously given, whether the union operated through its officers in the direction, in the acquiescence or in the ratification of whatever you may find to have been the fact with respect to the allegations as to whether a conspiracy existed or not.

Is there anything further?

(No response.)

The Court: The jury may retire, and I want you to feel free to communicate with the Court: I shall be available as long as you are deliberating in this case.

7409 (Whereupon at 5 P. M. the jury retired for further deliberation.)

(At 11.15 P. M. the jury returned to the court room.)

(The roll of the defendants was called and all were present.)

The Court: Mr. Foreman, I have asked that the jury be brought in for the purpose of ascertaining whether you have reached any determination.

The Foreman: No, we haven't, your Honor.

The Court: Well, you have had a long and arduous day. You have now been here for more than twelve hours, and if it comports with your idea the Court will be very glad to suspend your deliberations now and arrange for your accommodation at a hotel until tomorrow morning.

Now you may retire and confer with your fellow jurors
7410 and let me know whether you prefer to deliberate longer or whether you wish to suspend and resume tomorrow here at 10 o'clock or 10.30, and I will leave it for your determination in your jury room at what hour, should we suspend now, you prefer to convene tomorrow morning. You may retire for that purpose and the Court will remain in session so that you may return promptly.

(The jury retired from the court room.)

(At 11.23 P. M. the jury returned to the court room.)

The Court: Mr. Foreman.

The Foreman: Well, we feel, your Honor, that we won't arrive at a verdict within an hour or so or within the next two hours.

The Court: You feel you would rather continue in session?

The Foreman: Yes.

The Court: You may do that.

The Foreman: No. We will not reach a verdict within the next hour.

The Court: Very well.

The Foreman: And if we could adjourn until tomorrow morning at 10 or 10.30——

7412

The Court: Well, do you want to make it 10 o'clock or 10.30?

The Foreman: Your convenience, your Honor.

The Court: It doesn't matter to me. I am here at nine.

The Foreman: I think most of us want it at ten, then.

The Court: Very well. The clerk will prepare an order for the transportation and accommodation of the jury.

The court will adjourn until 10 o'clock tomorrow morning, and when you come here in the morning first report to the clerk so that he may note that the jury are all here. Then you can go to the jury room.

(The jury retired from the court room.)

(Adjourned to May 24, 1940, at 10 A. M.)

7413

7414 *Communications from Jury and Charge.*

New York, May 24, 1940, 10 A. M.

(The jury resumed their deliberations at 10 A. M.)

11.15 A. M.

(The roll of the defendants was called and all were present.)

(The jury returned to the court room.)

The Court: The court has received a communication from the jury, through its foreman, which divides itself into two parts, the first requesting a review of that portion of the charge relating to legislative measures passed
7415 subsequent to the Sherman Act, qualifying this act in its specific relation to unions.

So there won't be any misunderstanding I will start with the Sherman Act, and I ask you to give particular attention to the wording of these statutes in order that you may note their application to a corporation or an association as well as to a person, which under the Sherman Act either a corporation or an association is deemed to be.

The Sherman Act, Section 1:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal:
> 7416 * * * Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Now I have said to you that you are in nowise to concern yourselves with respect to the punishment in deter-

mining guilt or innocence, but I interpolate at this point that neither a corporation as such or an association, which Local No. 807 is, can have visited upon it any other punishment than the fine; and I make this particular pronouncement now lest there be any confusion in your minds that because under the law an association, like a corporation, is regarded the same as a person that punishment can be imposed upon the officers or the individuals of the union as such. It cannot.

Considerable diversity of opinion developed in the interpretation of the applicability of the Sherman Act to various cases which arose after its enactment, and then came the Clayton Act. Section 6 of the Clayton Act— 7418
you will note that there are only two sections of this law that I quoted to you, and I am now rereading to you, because they are the sections that are affected in the indictments in this case. Section 6 reads:

> "The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations 7419
> or conspiracies in restraint of trade, under the anti-trust laws."

Section 20 reads:

> "No restraining order or injunction shall be granted by any court of the United States in any case involving, or growing out of a dispute concern-

ing terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law."

You will note that that provision relates to the use of the civil process of the court and limits its use.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or
7421 labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes;
7422 or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violation of any law of the United States."

Now, I did not read that provision to you yesterday for any other purpose than to put before you all that is contained in the Clayton Act with respect to the guaranties which have been given by the Congress of the United States

under the Constitution to workingmen in their efforts to obtain by lawful and peaceable means whatever they may feel they are entitled to, and as the statute itself clearly indicates, the courts have been limited in the granting of injunctions to prevent the exercise of these rights on the part of workingmen, except in cases where the damages may be irreparable and there is no adequate remedy in a lawsuit for civil damages.

And then I pointed out to you that in construing the Clayton Act the United States Supreme Court had assumed the normal objects of a labor organization to be legitimate and had declared that nothing in the anti-trust laws should be construed to forbid the existence and operation of such organizations or to forbid their members from lawfully carrying out their legitimate objects, and that such an organization should not be held in itself, merely because of its existence and operation, to be an illegal combination or conspiracy in restraint of trade. Then I said there is nothing in the section to exempt such an organization or its members from accountability where it or they deport from normal and legitimate objects and engage in an actual combination or conspiracy, and by that I mean a criminal conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws. 7424 7425

We all know what the right of freedom of speech is. No one can be arrested for thinking, because you can't prove what somebody is thinking about, but it is when they give expression to their thoughts that you can deduce what those thoughts are or were. We know that a great deal has been said and written on the subject of free speech, and that is something which is guaranteed by the Constitution of the United States of America; but does the right of

free speech give me the right to communicate by letter to somebody and perpetrate what is defined by the law as a criminal libel? There you get the distinction between what a man may do within the realm of free speech and what he may not do according to the legislative enactment that defines criminal libel.

We also know, I think, or have a pretty general idea of what is known as the doctrine of religious freedom; under our constitution we all have the right to worship in whatever way we choose according to the dictates of our own conscience, but certainly the right to worship at all according to anybody's conscience must assume that he
7427 has a conscience. Suppose that any religious organization—it doesn't make any difference what organization it might be, but suppose any religious organization was called together by whoever was the head of it and it was determined by those who were present that they would commit an act of depredation against somebody; would it be reasonable to suppose that the acts which were committed and which it was charged constituted a conspiracy might be excused upon the ground that it was a part of the religion which those particular people professed and that they were acting in full freedom under the Constitution in the exercise of their religious beliefs according to their conscience? That it seems to me defines or establishes a line of demarcation or delineation between what is reasonably to be inferred as lawful and what may be unlaw-
7428 ful. Whether it is unlawful or not, that is whether it is criminal or not, depends upon the facts that are produced here that are in the form of the testimony of sworn witnesses or exhibits which are offered and received in evidence, and in order that you may determine that a crime has been committed you must be satisfied upon the facts beyond a reasonable doubt that there was a conspiracy and then you must find who was in the conspiracy in order that you may fix any criminal responsibility that may exist.

We come then to the Norris-LaGuardia Anti-Injunction Act, and I quoted that statute and I will read it again so that you will have before you all that there is on this particular subject. Section 101 of the Code provides:

> "No court of the United States as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter."

That deals with the exercise by this Court of its equity jurisdiction; and our jurisdiction here is criminal, bankruptcy, tax matters, customs matters, and citizenship, admiralty, and common law and equity, which now have been combined into one, and they are designated as civil actions, and that includes the application for and the granting of injunctions. 7430

This section continues:

> "nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

Then the chapter proceeds to declare the policy as follows: Section 102:

> "In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited by this chapter, the public policy of the United States is hereby declared as follows: 7431
>
> "Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate

and other forms of ownership associations, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of
7433 labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

And then follows Section 103, which is one of the definitions:

"Any undertaking or promise, such as is described in this section, or any other undertaking or premise in conflict with the public policy declared in Section 102," which I have just last read, "is
7434 hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court."

Now, I say again that was an effort on the part of Congress of the United States to further limit the power of the United States courts to interfere with the exercise of the rights of workingmen to better their wages, shorten

their hours or improve working conditions, by restricting the power of the courts to interfere with them by injunction, unless, as I have pointed out before, the power reserved to the Court was made out in the application for the injunction and because of the inadequacy of any remedy at law.

This statute continues:

> "Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association or corporation, and any 7436
> employee or prospective employee of the same, whereby:
>
> "(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization."

Now, do you see any situation where that applies here?

> "(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes or remains a member of any labor organization or of any employer organization."
>
> 7437

That is to prevent an employer when he engages a man from requiring that he withdraw from whatever association, union or otherwise that he may be in at the time that he enters the employ of the person.

Section 104 provides:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary

or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute as these terms are herein defined from doing, whether, singly or in concert, any of the following acts:"

That is, these acts cannot be enjoined. They are:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment."

Well, as I have told you, a man has a right not to work
7439 if he doesn't choose to work, and he can't be enjoined from refusing to work.

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103",

the section last read.

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value."

It hasn't anything to do with this case at all.

7440

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;"

Now, right there, they can't enjoin anyone from aiding by lawful means. That is the purpose of that section.

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by

advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified."

If they are lawful they are peaceful; nobody can be restrained from doing them. 7442

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103 of this chapter",

the one last read.

Section 105 provides:

"No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104", 7443

the preceding section, which related to lawful and peaceful means.

Now, I call your attention to Section 106, as I did before:

"No officer or member of any association or organization, and no association or organization par-

ticipating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

Now, suppose that I am a member of an organization and a charge is made that certain members of the organization conspired to commit a crime. Suppose that I don't even know anything about it. While a member of that
7445 organization I may be out of the city, out of the State or out of the country. Well, manifestly there isn't anything that anyone could do under those circumstances, under this provision of the statute or under common sense that could make me responsible for it, but the statute says that neither I nor anybody else connected with the organization shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents except upon clear proof of actual participation in, or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof. Now, that doesn't exempt in the first place the man who commits the acts if they amount to a crime, and it includes anybody else where the proof is clear that he actually participated or that he actually authorized
7446 said acts or that he ratified such acts after actual knowledge thereof, and that may apply as well to an organization as to an individual if the jury are satisfied by the required measure of proof that there was a conspiracy, that those acts either constituted the conspiracy or formed a part of it, or that they were performed in pursuance of it and for the purpose of carrying it into effect.

I hope that I have covered all that you desired with respect to the statute relating to the Sherman Anti-Trust

Act, and let me add this further word about that: It has been stated that the Sherman Anti-Trust Act is a monopoly statute. Well, it is not only against a trust that it may be directed. As I have indicated to you, it may be directed against a person, and as a person it may be directed against a corporation or it may be directed against an association, and so far as this case is concerned, its application depends entirely upon whether the crime of conspiracy as charged under the first indictment has been established by the required measure of proof as I have defined it to you to be.

The second request of the jury is to hear the testimony of Edward Warren, Mr. Harris, Mr. Goddard and Mr. Campbell. Do you want the entire testimony of each? 7448

The testimony of Mr. Goddard, as I recall it, was long; I think he was on the stand a couple of days.

(No response from the jury.)

The Court: Well, the reporter will read it.

(The testimony of the witness Warren was read from the beginning of his testimony on page 1638 of the record to page 1659.)

The Foreman: I think that is all we want, your Honor.

The Court: Does the jury want the cross-examination read?

The Foreman: The juror who requested the testimony says that that is enough, that that refreshes her recollection.

The Court: Do the defendants want the cross-examination read? 7449

Mr. Murray: If your Honor please, I suppose we are concluded by what the jury wants.

The Court: No. If you want to have it read, I will have it read.

Mr. Murray: If the jury doesn't request it, if your Honor please, I would not.

The Foreman: The juror says that she doesn't wish to hear any more of the testimony she requested, your Honor.

The Court: Does that apply to the witnesses Harris, Goddard and Campbell?

The Foreman: I believe it does, your Honor.

The Court: All right.

The jury may retire; and I will say again, if you want any of the exhibits they are here.

(At 12.10 P. M. the jury retired from the court room.)

1.25 P. M.

7451 The Court: The Court will take a recess until half-past two.

(Recess to 2.30 P. M.)

(At 2.30 P. M. the jury resumed their deliberations.)

5.35 P. M.

(The roll of the defendants was called and all were present.)

The Court: I would like counsel to come up to the bench.

(Conference at the bench between court and counsel.)

(The jury returned to the court room.)

The Court: Are all of the defendants present?

The Court: Yes, sir.

7452 The Court: Has the roll been called?

The Clerk: Yes, sir.

The Court: Now call the roll of the jurors.

(The roll of the jurors was called and all were present.)

The Clerk: Mr. Foreman and members of the jury, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: How say you?

The Foreman: Shall I read these off individually, your Honor?

The Court: You may if you want to. Just go across the page.

The Foreman: You mean the separate counts for each?

The Court: Yes.

The Foreman: The defendant union, Local 807, we find guilty on all counts.

The Court: What counts?

The Foreman: On the four counts; there is one count of the first indictment and four counts of the second indictment. 7454

The defendant George Bagley——

The Court: Is that on each count? The first count of the first indictment and the four counts of the second indictment?

The Foreman: Yes, your Honor.

The Court: All right.

The Foreman: The defendant George Bagley we find guilty on the first count of the first indictment and on the first and second counts of the second indictment.

The Court: And not guilty as to the others?

The Foreman: Not guilty as to the third and fourth counts of the second indictment.

Joseph Bender we find guilty on the first count of the first indictment and the first two counts of the second indictment. 7455

The Court: And not guilty as to the other two?

The Foreman: Yes.

The defendant Michael Cahill guilty on the first count of the first indictment and guilty on the first two counts of the second indictment, and not guilty on the last two counts of the second indictment.

The defendant William Campbell we find guilty on all counts of the first and second indictments.

The defendant Joseph Deegan we find guilty on the first count of the first indictment and the first count of the second indictment, and not on the second, third and fourth counts of the second indictment.

The Court: That is, guilty on the first count and not guilty on the other three counts of the second indictment.

The Foreman: The defendant Robert Dillon we find guilty on all counts of both indictments.

The defendant Frank Downs we find guilty on all counts of both indictments.

The defendant Austin Furey we find guilty on all counts of both indictments.

7457 The defendant John Gaughan we find guilty on the first count of the first indictment and the first and second counts of the second indictment, and not on the third and fourth counts of the second indictment.

The Court: Not guilty on the third and fourth?

The Foreman: Not guilty.

The defendant John Horan we find guilty on the first count of the first indictment and the first count of the second indictment.

The Court: And not guilty as to the other three?

The Foreman: Not guilty as to the second, third and fourth counts of the second indictment.

The defendant Andy Jakakas we find guilty on the first count of the first indictment and the first count of the second indictment and not guilty on the second, third
7458 and fourth counts of the second indictment

The defendant Abraham Klenofsky we find guilty on all counts of both indictments.

The defendant Leonard La Marne we find guilty on the first count of the first indictment and the first count of the second indictment and not guilty on the second, third and fourth counts of the second indictment.

Manuel Magan we find guilty on the first count of the first indictment and the first and second counts of the

second indictment and not guilty on the third and fourth counts of the second indictment.

James Murphy, guilty on the first count of the first indictment and the first and second counts of the second indictment and not guilty on the third and fourth counts of the second indictment.

George Needelmann we find guilty on all counts of both indictments.

Bernard Randazzo we find guilty on all counts of both indictments.

Samuel Reichler we find guilty on all counts of both indictments.

Morris Reichler we find guilty on the first count of the first indictment and the first count of the second indictment and not guilty on the second, third and fourth counts of the second indictment. 7460

The defendant Thomas Sharkey guilty on the first count of the first indictment and the first count of the second indictment and not guilty on the second, third and fourth counts of the second indictment.

William Simpson guilty on all counts of both indictments.

Tony Venditti, guilty on all counts of both indictments.

Peter Waskiewicz guilty on the first count of the first indictment and the first count of the second indictment, and not guilty on the second, third and fourth counts of the second indictment.

Edward Weinheimer guilty on all counts of both indictments. 7461

John Weinheimer guilty on the first count of the first indictment and the first count of the second indictment, and not guilty on the second, third and fourth counts of the second indictment.

Harry Zollinger guilty on the first count of the first indictment and the first count of the second indictment and not guilty on the second, third and fourth counts of the second indictment.

The Court: Mr. Murray, counsel may if they like, take the sheet which I have marked as I have heard the foreman read it.

The Foreman: Your Honor, it is permissible for the jury to recommend leniency in the case of any of the defendants?

The Court: Well, I would be glad to have you do so if you wish to do that.

The Foreman: We wish to recommend leniency in the case of Joseph Deegan, Morris Reichler, Thomas Sharkey and Peter Waskiewicz.

The Court: Just a moment. Thomas Sharkey, Peter
7463 Waskiewicz?

The Foreman: Peter Waskiewicz and John Weinheimer.

The Court: All right.

The Foreman: And Andy Jakakas.

Mr. Murray: May I have your chart, if your Honor please?

The Court: I handed it down.

(The clerk handed a paper to Mr. Murray.)

Mr. Murray: I ask your Honor to poll the jury as to the conviction of Local 807 and ask the jury if it is the deliberate verdict of the jury.

The Court: The clerk will poll the jury as to the jury's verdict with respect to Local 807.

The Clerk: You have heard the verdict as recorded as to Local 807, guilty on all counts of both indictments.
7464 Is that your verdict?

(The above question of the clerk was asked of each juror and each juror answered in the affirmative.)

Mr. Murray: Your Honor, I ask that the jury be polled as to their verdict on the defendant George Bagley.

The Court: The clerk will poll the jury.

The Clerk: As to the defendant George Bagley you have heard the verdict as recorded, guilty on count one of

the first indictment and guilty on the first and second counts of the second indictment and not guilty on the third and fourth counts of the second indictment. Is that your verdict?

(The above question of the clerk was asked of each juror and each juror answered in the affirmative.)

Mr. Cahill: If your Honor please, I can't see the jury with Mr. Murray standing there. May I ask that he stand back?

Mr. Murray: Well, that is too bad.

The Court: Well, I will ask Mr. Murray if he won't stand at the end of the jury box. Do you mind standing at the end of the box? 7466

Mr. Murray: Any place your Honor says.

Now I ask that the jury be polled as to its verdict in the case of Joseph Bender.

The Court: The clerk will call the roll.

The Clerk: You have heard the verdict as recorded, guilty on the one count of the first indictment, guilty on the first and second counts of the second indictment and not guilty on the third and fourth counts of the second indictment. Is that your verdict?

(The above question of the clerk was asked of each juror and each juror answered in the affirmative.)

Mr. Murray: If your Honor please, the defendant Michael Cahill is not represented by me. I ask if Mr. Boudin cares to poll the jury.

Mr. Boudin: I will ask you to ask to have the jury 7467 polled.

Mr. Murray: All right. In behalf of Mr. Boudin I ask that the jury be polled on behalf of Michael Cahill.

The Court: Well, we will do that if you resume your former position so that we can see the jury and the clerk may observe whether each jury man and each jury woman answers his or her name as it is called. Poll the jury.

7468 The Clerk: You have heard the verdict as recorded as to the defendant Michael Cahill, guilty on the one count of the first indictment, guilty on the first and second counts of the second indictment, and not guilty on the third and fourth counts of the second indictment. Is that your verdict?

(The above question of the clerk was asked of each juror and each juror answered in the affirmative.)

The Court: Is there anything further?

Mr. Murray: Pardon me just a moment, your Honor. Your Honor, the defendants have no further requests
7469 for a poll on the verdict.

Mr. Boudin: If your Honor please, we would like to reserve motions with respect to the verdict for next Tuesday morning.

The Court: Any objection?

Mr. Cahill: I have no objection.

Mr. Murray: I would ask your Honor, if I might, that sentence be set down for two weeks from to-day.

The Court: Well, there are certain defendants as to which the Court feels that there should be a probation report and ordinarily it requires the probation officer about ten days. I presume in this case the one probation officer would make the whole investigation and two weeks would not be unreasonable for an opportunity to enable him to make the necessary investigation.

7470 Mr. Murray: Your Honor, I didn't set that as an arbitrary time; only for the convenience of the Court.

The Court: No. I am going to grant it.

Mr. Murray: Whatever time appears to be convenient for the Court will be all right for me.

The Court: That will be Friday, June 7th, and I shall grant it to that day, at half-past ten.

On the question of the continuance of bail: I understand that there is no objection on the part of the Govern-

ment to the continuation of bail in certain of these cases. I think, Mr. Cahill, you indicated that there were two defendants——

Mr. Cahill: That is right, your Honor.

The Court: With respect to whom you desired an opportunity to make some further inquiry or investigation. They were Dillon and Horan. Have you satisfied yourself that you will or will not oppose their continuance in the existing bail which is $1500?

Mr. Cahill: I do not oppose, your Honor.

The Court: Then the bail as to all the defendants will be continued until Friday, June 7, 1940, at 10.30 o'clock, but it will come up in room 706 and not in this room.

All of the defendants will take note that they are required to appear here on June 7th. That is two weeks from to-day. It will be at half-past ten in room 706.

I have a word that I want to say to the jury before discharging them: I said to you that I thought this was a simple case, and I feel now that I was wrong, because it does not seem that it was quite so simple, but personally I felt that there wouldn't be much attention given to the statutory recitals that were incorporated in the charge, but that the jury would get into the question quite early as to whether there was a conspiracy and if there was who were in it and render a verdict accordingly. The fact that you have taken the amount of time that you have shows first of all the conscientious discharge of your duties, and the result of the verdict that you have announced shows that you have exercised discrimination in your determination of the guilt or non-guilt of the defendants with respect to the various counts in both indictments, and the Court will certainly take into consideration your suggestion with regard to the six defendants concerning whom you have made a recommendation.

During the course of this trial you may remember that the Court was asked whether it would take judicial notice,

of the Federal Motor Carrier Act, and I said I would. I didn't say anything to you about it in the charge, because I did not regard it as material, and no one made any request that I refer to it, but I am going to refer to it now.

The Motor Carrier Act does authorize the Interstate Commerce Commission to inquire into, investigate and to prescribe rules and regulations with respect to the hours of employment of over-the-road truck drivers as well as conditions, and it was my feeling before we got far into this trial, and it is my feeling now, that that was the place for the union to go in the first instance. I have every sympathy in the world with the purpose of the union
7475 and of workingmen. I feel that it is just as essential for them to organize and to protect their rights as it is that individuals incorporate themselves into corporations and amalgamate one corporation into another in order to better secure their rights, and it sometimes happens that where the interests of capital are incorporated and the rights of labor are not organized, capital secures an advantage over labor, and that labor can only protect itself by organizing for the purpose of meeting those conditions and insisting upon what is lawfully theirs; but there is no law in this land that authorizes anyone to take into their own hands the administration of the affairs of this Government, and there are too many people in this country who are undertaking to do what the Government ought to do and what
7476 ought to be left to the Government to do, and results could have been achieved here no doubt first by application to the Interstate Commerce Commission for the enforcement of the provisions of the Motor Carrier Act just as the Interstate Commerce Commission enforces the regulations and the laws with respect to employees upon the railroads of the country.

Mr. Maguire: May I ask your Honor in that connection to advise the jury that the first limitation of hours by over-the-road——

The Court: Was effected by the Interstate Commerce Commission in January, 1940.

Mr. Maguire: 1939.

The Court: 1940, according to my records, but that may have been due to the fact that more pressure was not brought in a legal way upon the Interstate Commerce Commission.

Now, I hope that this trial will serve notice upon everybody that there is a way to obtain lawful relief in this country, and that anyone who undertakes to obtain unlawful relief or relief by criminal means is not protected by any statute of the United States of America.

The jury are discharged with the appreciation and 7478
thanks of the Court. I am sorry that there is no statutory provision which authorizes the granting of extra compensation to jurors who serve beyond the statutory period. We have endeavored to secure some relief in that respect, but it has not come to fruition as yet; but as some measure of compensation or appreciation I will excuse anyone on this jury who makes application to the clerk therefor from service for a period of two years beyond the two-year period that you would otherwise be entitled to if you wanted exemption. If on the other hand you want to come here and serve the next time your name regularly comes out of the box, you may do so; but if you want exemption you are entitled to it for four years.

This Court will now adjourn until to-morrow morning 7479
at half-past ten.

New York, May 28, 1940.

Mr. Murray: Your Honor, I am wondering if your Honor could grant a couple days' adjournment for the argument of these motions.

The Court: Well, I would rather have it go on. I set aside this morning for it. I have a trial that will resume

at 2 o'clock and finish to-morrow. Thursday will be Decoration Day. I have at least three or four days' work on this case that you have just heard argued here, which is the first case that has come up in the country under what is known as the "death sentence" provision in the Holding Company Act, and I have four or five matters on my desk which I am intending to write opinions on over the week-end, so that I will start in here next week at the new term with as clear a slate as possible, and I had planned to get out of town on Wednesday night and take this work with me and work on it until I come back on Monday morning.

7481 Mr. Murray: You see, your Honor, the Apex case came down from the United States Supreme Court.

The Court: I read it this morning in full.

Mr. Murray: Whether it is fully reported I don't know, and of course I suppose unless you see the points raised in the briefs on both sides you are not able to conclude precisely as to what was decided.

The Court: Well, I don't know anybody who is more familiar with it than Mr. Boudin.

Mr. Boudin: Well, I telephoned to your Honor's secretary yesterday and suggested an adjournment. That was before the Apex decision. I wanted to have a few more days to examine into the Anti-Racketeering Law which I have given more attention to since the close of this case because of the rather frankly sharp verdict of the jury.

7482 I read excerpts from the decision in the Apex case in the Times. I haven't the full opinion of the Court. I will probably not get it until to-morrow.

The Court: There is a full copy of the opinion in the New York Times.

Mr. Boudin: No, your Honor, that is not full.

The Court: Maybe you didn't get a late edition of the Times.

Mr. Boudin: Maybe not.

The Court: The article I read said it was a complete text.

Mr. Boudin: Is that so? Then your Honor must have had a different edition. Mine said simply an excerpt. I could see that it was an excerpt. I might say, your Honor, on the basis of this excerpt that I read the Court very closely followed the argument in the brief that I submitted here. I may be mistaken in that. I thought if we could take an adjournment until some time next week——

The Court: No, I can't do that.

Mr. Boudin: Until Friday of next week.

The Court: I can't upset the calendar here that way. 7484
It is too difficult.

Mr. Boudin: Then I would suggest if we argue this morning—I don't know whether your Honor cares to take briefs.

The Court: Well, let us proceed with the argument now and see what the situation is at the conclusion of the argument.

Mr. Boudin: If your Honor please, I don't know what is the number of the section of Title 18, Criminal Code, which applies to motions to set aside the verdict or in arrest of judgment. If Mr. Cahill, or somebody will be good enough to suggest the section number, all right. The defendants move to set aside the verdict of the jury and in arrest of judgment on the ground that the verdict is contrary to the evidence in the case and the weight of evi- 7485
dence, and the law of the case, and also upon all the exceptions taken during the trial including the exceptions to the denial of the certain motions at the commencement of the trial and at its close, and also the denial of the motions to dismiss the indictment. I don't know whether your Honor can pass on that, on the motion in arrest of judgment.

We renew the motions upon all the grounds and make these motions upon all the grounds then stated, and also I would like to call your Honor's attention to this, in so far as the motion under the Anti-Racketeering Act is concerned: The point may sound very technical, but I think I ought to raise it here; it has not been raised heretofore. Upon examining the indictment under the Anti-Racketering Act I find that it refers to the act of Congress as the Act of January 14, 1934, and there is no such act. Now, I say frankly that is purely a question of date, but there is no such act as of January 14, 1934.

On the question of the merits, I would like to say to
7487 your Honor first on the question of the conviction under the indictment under the Anti-Trust Act, your Honor will recall that the theory of the prosecution, stated repeatedly in the course of argument during this trial by counsel for the Government, is that certain acts of violence claimed to have been committed brings this case within the purview of the Anti-Trust Law. It seems to me that the decision in the Apex case disposes of that, and if that is disposed of, in other words if the conviction cannot be sustained because of acts of violence as such, that is the means used in carrying out the objects whatever they were, then certainly there is nothing in the case upon which a conviction can be based.

I have gone over this thing in my own mind. I have had no time to read the record as to anything that could
7488 be claimed to sustain the conviction outside of the question of violence, assuming that that could be considered in view of the theory upon which the case was tried, but I don't think there is anything whatever; furthermore even if there were evidence of that kind in the case, the conviction here could not stand, and therefore your Honor ought to grant the motion in arrest of judgment under that indictment because of your Honor's refusal to charge the jury after specifically requested by the defense, by counsel

for the defense, that the Anti-Trust Act deals with objectives and not with means.

The decision of the United States Supreme Court is flat on the subject; it sustains my contention which I urged all along, that where the objectives themselves are not sufficient to bring the case within the purview of the Anti-Trust Act, it cannot be brought within the purview of that act just because the means were unlawful. That was the very point, I should say, upon which that case hinged. There were only two points raised as far as the prosecution was concerned in that case, and they were: (1) That under the National Labor Relations Act a labor dispute affected interstate commerce; (2) that under the Clayton 7490
Act the word "lawful" implied that the use of violence or any other illegal means brought the case within the purview of the act, even though it wouldn't be within the purview of the act if peaceful means had been used. The National Labor Relations Act has no importance here except to say that they advanced that theory. In one case there was the problem of the interpretation of power, and the other was a question of statutory interpretation. A difference in the language of the two acts makes a difference. Now, the Court has sustained that and therefore that brings the question of what is interstate commerce back to where it was in all the other cases under the Sherman Act prior to the enactment of the National Labor Relations Act on the one hand, and on the other the Court flatly stated that the question of illegality of means never- 7491
theless doesn't change the situation. So if there is a certain objective, they wouldn't come within the purview of the Anti-Trust Act if peaceful means were used, but mere use of violence doesn't change the situation, and I might say the violence in that case I think was much greater than in this case. I don't know whether your Honor is familiar with that case, but there was violence in that case and the Court said that that didn't affect it.

Therefore, on the contention of the prosecution in this case that there were acts of violence, it would seem to me that under the decision in the Apex case the conviction cannot be sustained. I say it could not be sustained even if we hadn't made the specific requests to charge, and the denial of them, because it is a matter of substantive law; it isn't anything that could be cured, but as I have pointed out to your Honor we made specifically that request and that request was denied, and it seems to me there is no escaping the proposition that that makes the verdict untenable.

On the question of the Anti-Racketeering Law the con-
7493 viction under that indictment under that law, I want to say to your Honor that the more I think of it—and I have given the matter very careful thought since the conclusion of the case; even though I thought of it before, I must confess I was more concerned with the anti-trust problem while we were trying the case than with the Anti-Racketeering Law, because frankly it didn't seem to me conceivable that there could be a conviction under the Anti-Racketeering Law—as I say, I was more concerned with that conviction because an examination of the act as well as the surrounding circumstances under which the act was passed clearly demonstrates that the act was not intended to cover any such situation as we have here.

The Anti-Racketeering Act under which the indictment
7494 in question here was found was one of a number of bills introduced into Congress some of which afterwards materialized into acts of Congress, in pursuing an investigation into what was called the crime situation in the United States at that time. Your Honor will recall that that was the time when the country was appalled by the prevalence of very serious crimes of violence, mostly firearms, kidnaping and shooting, in which the enforcement of the criminal law seemed to have been broken down in the States because of the facility which modern means of existence had given

to criminals, both in the commission of crime and in escaping the consequences of detection, and the purpose of the acts was to facilitate the enforcement of the laws against very serious crimes, not petty crimes but crimes so serious that the States seemed unable, powerless, to cope with them; and one of the elements involved was that the crime should be an organized crime.

It was intended to meet situations where the underworld, instead of as heretofore being composed of individuals, operating individually, had organized itself into powerful organizations which enabled them to commit crimes which the States were unable to reach. The Anti-Racketeering Act was the principal act intended to cover 7496
these situations. There were other acts. There was a special kidnaping law; there was a special firearms law which intended to regulate firearms, and one of the members of Congress said that that act was considered to meet the situation, it was intended to meet the kind of crimes usually committed by firearms; it wasn't intended to meet a case where a fellow punched another fellow on the chin or in the nose.

There is one instance which illustrates that and that is this: When the act was first introduced and originally passed by the Senate, it provided for a penalty of no less than one year and up to ninety-nine years imprisonment, and a fine was compulsory, not optional, and in giving the reasons therefor the Department of Justice pointed out the fact that this was intended to meet the most serious kinds 7497
of crime, and that therefore the ordinary provisions of ordinary criminal statutes which left it to the Judge to determine what sentence to give, whether a day or a year or the usual maximum, and also making it optional to impose some kind of fine, should not apply; that this was extraordinary kind of crime that they were dealing with, and therefore they treated it in the most extraordinary way. Therefore, the statute as originally drawn by the

Department itself and as passed by the Senate provided for the imposition of a term imprisonment of not less than one year and up to ninety-nine years, and also made the fine compulsory, and there was no maximum, but the bill originally in the Senate said that the fine should be at least commensurate with the amount of profit resulting to the defendant. In other words, it was intended to meet an extraordinary situation, an extraordinary kind of crime in which a tremendous fine would be the only thing that would be commensurate with the profit resulting to the criminal, and this was to correspond with the prison sentence. After the bill came to the house a motion was
7499 adopted to reduce the maximum from ninety-nine years to ten years and to make the fine optional, but under the act there is still a minimum and that is that there must be imprisonment of not less than one year, which indicates the extraordinary character of the crime that Congress had in mind.

I say the more I examine into the history of this act the more impressed I am by the fact that it was not intended to meet the kind of situation which we have had disclosed in the trial of this case. Aside from the question of exemption, which I will come to in a minute, it was not intended to meet this kind of crime. It was not intended to meet either as far as the amount of money involved here or the kind of violence or threats that were used are concerned, the kind of situation which is involved here. Con-
7500 gress certainly intended to leave the kind of petty crime that has been disclosed in this case to the States where it belonged and always belonged and still belongs.

It is not the kind of situation which Congress has in mind.

Now I would like to call your Honor's attention in this connection, while I am still talking of the act generally and before I come to discuss the particular verdict in this case, to this matter: My research hasn't been extensive.

That is one of the reasons why I wanted to have a little more time, because I think the situation is a very serious one and deserves very careful research. I found only two cases illustrating how an act after it is enacted assumes a life of its own which is contrary frequently to the intention of the Legislature. I could find no indictment for organized crime such as Congress had intended that this act should cover and the situation which Congress had intended to meet—and I might perhaps interrupt myself at this moment to call your Honor's attention to the fact that the Assistant Attorney General who was most active in the drafting and in the advocating of this act, Mr. Joseph B. Keenan, had at the time when he appeared 7502
before the Committee of Congress, the Judiciary Committee, urging this act, just came back from a case where he had successfully prosecuted a kidnaping charge, which shows what was operating in the minds of the people in the Department as well as in Congress as to the class of crime that was intended to be met.

Coming back to the act itself: I found no report of an indictment for organized crime. The two cases I did find were related to labor unions. The reports of those cases are rather interesting.

One was the McGlone, which was in Philadelphia; the other was the Gramlich case, which arose in Illinois.

The McGlone case was what we call a racketeering case, even though the officers involved were labor union officials. In other words, it was the case of a shakedown. A union 7503
official, and, I think, his attorney, were charged with having obtained $5,000 from some employer. It was a shakedown of a large sum of money, or at least a comparatively large sum of money; but the indictment in that case was quashed, was dismissed, because the Court held that it was not the kind of case that the statute was intended to cover, and there is a discussion there relating to labor

unions and so forth and so on. I haven't read the McGlone case in some time, and I am not certain as to the reasoning of the Court, but I remember the facts.

The Gramlich case on the other hand was not a shake-down case, but was a labor union case, more like the case here involved, except that the crimes there charged were extraordinary and more or less like the ones that Congress had in mind when the act was passed. In that case it was shown that a certain labor union known as the Progessive Miners Union in its fight for existence and fighting the United Mine Workers had resorted to extraordinary, serious crimes; trains were bombed, railroad bridges were
7505 bombed and wrecked. It was the kind of crime so far as violence was concerned that was clearly intended to be met by Congress. In that case there was a motion made to dismiss, which was denied, but the report of the case shows that the motion to dismiss was not made on the merits, but rather was an attack on the constitutionality of the act, and as far as I recall the decision in that case, the Court merely held that the act was constitutional and overruled the criticism advanced against it on the score of unconstitutionality because the act was intended to reach, as it said in its first section, any act which in any way affected commerce in any way or any degree. The interesting part of it is that notwithstanding the fact that motion to dismiss on the ground of unconstitutionality was denied,
7506 the indictment was actually dismissed in that case. I have not been able to find on whose motion it was dismissed and what were the grounds of the dismissal but I do know that it was dismissed, and it was dismissed under very peculiar circumstances, not because the acts were not serious or because as sometimes happens there is a settlement of a strike or some difficulty and therefore the prosecution is dropped, but was dismissed and a new indictment found under the law other than the Anti-Racketeering Act.

I am not sure that my statement is definite, as I said to your Honor before, because I haven't had a chance to check on these things, but it is my present impression that the Government itself finally came to the conclusion that acts committed in connection with a labor dispute mainly for labor union purposes to compel the employment of union members, members of the union, which is basically the charge here, could not be successfully prosecuted under the Anti-Racketeering Act; and therefore the Government of its own motion moved to dismiss and then they found an indictment under two statutes, peculiarly enough the Anti-Trust Act on the one hand, because it involved interstate transportation, and obstruction of the mails on the other, because mail trains had been bombed and wrecked. 7508
That is the history of the act. In fact, there are no authoritative decisions thereunder. Both opinions are purely District Court opinions, and on the trial of a case, but merely on motions to dismiss. That indicates to me that anyone who has handled the situation, whether courts or the Government itself, would come to the conclusion that it would be improper to prosecute a labor dispute or anything connected in any way with a labor dispute under the Anti-Racketeering Act, and I am very strongly urging that consideration upon your Honor.

It seems to me that Congress could never have passed an act under which men like the men involved in this case, most of whom were clearly trying to get a day's work or a month's work or employment, because of the 7509
use of force and violence, reprehensible as they may be, would come under this statute. There must be a term of imprisonment if there is an imposition of sentence at all. I don't mean to indicate that there may be no suspension of sentence; but when sentence is imposed it must be for not less than a year, and can be as much as ten years.

Passing that point I want to seriously urge upon your Honor the fact that I believe the four counts in the in-

dictment were improperly laid. In other words while of course under any act there may be a number of counts—there may be a number of counts under the Anti-Trust Act, and there may be a number under any act; but under the Anti-Racketeering Act they must be based on different acts; they cannot be based on the same act. If there is a conspiracy, they must be based on different conspiracies and not on the same conspiracy. The conspiracy under the Anti-Racketeering Act is one conspiracy and cannot be four conspiracies, and the intent here to draw four separate counts under four subdivisions, while permissible as a matter of pleading—and I am not urging it
7511 as a matter of pleading, but as a matter of substantive law—in other words, as I read the act the various subdivisions were intended to meet various situations. In other words, under one there may be cases where money was obtained by actual violence by a gang holding a man up and making him pay, or whatnot; the other one is a case where instead of holding him up physically or by threat of physical violence and immediately obtaining money they obtain an agreement of some kind which was worth money and afterwards the money was paid by consent. In order to meet that kind of situation where money is sometimes paid by nominal consent, the careful draftsmen of the law have included all of those possible contingencies under the various subdivisions. But it was
7512 never intended that for the same act or same holdup, let us call it, or same obtaining of a payment by consent or obtaining a contract a man or a group of men could be indicted under four counts or three counts. I think there are three subdivisions; the fourth one is conspiracy I think.

In this case there is only one conspiracy; it is not claimed that there were four conspiracies, and I respectfully submit that you cannot find a man guilty, or a group of men or an aggregation of men guilty, whether

it be a labor union or an individual of four different crimes under that one act. In other words, where the result of the conspiracy was the obtaining of money, you cannot vote an indictment for having obtained money and also having obtained it by consent and also under threat of physical violence. It is either threat of physical violence or consent. If it is consent it comes under one subdivision; if it is physical violence it comes under the other subdivision, but the same act cannot be both, and it was never intended that a man could be convicted for the same act by asserting it under four different counts, or three. It seems to me a reading of the act compels that conclusion. And while, as I said, the indictment may have been 7514
properly drawn purely as a matter of pleading—I am not discussing that now and I don't say it was or was not properly drawn—but assuming that it was properly done, in order to meet the kind of possible evidence that they might possibly introduce, they cannot have a conviction on more than one count. I say to your Honor if that is so, and I have no doubt your Honor will have come to the conclusion that it is so upon careful consideration, I don't think the conviction can stand on any of the counts. It is not only a question as to whether it can be sustained on more than one count; I don't think even that the conviction on one count can be sustained, because the jury had not been told that they could find a conviction under one count and what kind of case would bring it within a 7515
particular count of the indictment.

These are very serious matters, if your Honor please. They are not merely perfunctory motions. I want to assure your Honor that my reason originally for postponing this was because I didn't want to come to your Honor on so serious a matter and make a perfunctory motion or argument. I think the argument is a very serious one. It is not made perfunctorily, and I hope your Honor will give it the attention which I think it deserves.

The Court: Are there any other counsel for the defense who desire to be heard?

Mr. Murray: No, your Honor. We join in the argument of Mr. Boudin.

The Court: Then I will hear the United States.

Mr. Cahill: With your Honor's permission Mr. Burling will speak for the United States.

The Court: Very well.

Mr. Burling: If your Honor please, addressing myself first to the motion with relation to the Sherman Act, I am somewhat embarrassed by having to argue about the Apex case, because my connection with it is not as intimate as Mr. Boudin's. I am not familiar with the cerebrations which led to the opinion, nor have I read other than a summary which appears in my edition of the Times: so all I can say on the Apex case at the present time is I have no reason to doubt Mr. Boudin, but not taking his argument as conclusive as to the trend of thought which led to the opinion, but merely considering the case in connection with this case. The Apex case is obviously distinguishable from the case at bar on the same general ground as the distinctions which were urged upon your Honor between the cases involving restraint of interstate commerce which is indirect and flows from a local transaction, and a restraint which is directly imposed upon interstate transportation.

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As your Honor of course is aware the Apex case arose out of a sitdown strike in a factory, clearly a local transaction, and the way in which the petitioner argued that that was restraint on interstate commerce was that by the local action in the factory the flow of hosiery in interstate commerce was jammed up before it reached the State line.

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In other words, that is a case similar, for example, to the United Leather Workers v. Herkert, or the first Coronado case, where a local transaction was sought to be held a violation of the Sherman Act.

I have of course read the decision in the Circuit Court which reaches the same result. I will say to your Honor that if the effect of the Supreme Court decision in the Apex case is the same as the Circuit Court's then the Apex decision has no application to the case at bar, because it is distinguishable in precisely the manner that the first Coronado case is distinguishable, and in precisely the manner that the United Leather Workers case is distinguishable.

One other thing I would like to say with respect to Mr. Boudin's argument, applying the Apex case to the case at bar, is that I do not concede that the theory on which the instant case was presented is in the same terms as Mr. 7520
Boudin put it. The argument which has been presented to your Honor is as though this was exclusively a case charging unlawful means, and I emphasize the word "exclusively," because we assuredly did charge unlawful means. Counsel has derived comfort from the language reported in the newspapers that unlawful means alone are not enough to bring a case like this under the application of the Sherman Act, but that, of course, is not what we charge. The Government charged and introduced evidence, and the case was presented to the jury under your Honor's charge to the jury, on the theory that the conspiracy involved the use of force and violence to extort money which was not the bona fide payment of wages.

Now, it is not merely the fact that there is evidence in the case that someone hit someone else or that eight men 7521
beat someone else with planks and chains that we say brings this case under the Sherman Act, but that all the violence shown in the case was in pursuance and in furtherance of a general plan to commit the crime of extortion. I think your Honor will find that the crime of extortion is described in the Penal Law of the State of New York, that is the language of that section of the State law is substantially the same as the crime charged in Section 420(a) of the Anti-Racketeering Act.

In other words we charge violence to extort, and there is nothing in the language which is reported in this summary which says that that is lawful, and that is a question not only of means, but of the reason for which the means were used; that is, extortion, the purpose of getting the money; not in consideration for work done, but in consideration for refraining from interfering with the truck operators' trucks. We say in other words, and I will conclude the argument on the Sherman Act with this: we say if it is sought to break down the case into means, we say that force and violence were used, but that the verdict of the jury shows that the jury found as a fact that
7523 the purpose for which the force and violence were used was to carry out a conspiracy to induce the truck operators to pay sums of money in order to bribe or to induce the defendants to refrain from interfering with their trucks. All I can say is that so far as now appears there is no authority that that is not a violation of the Sherman Act.

I would like to read one sentence that appears in the opinion. I quote:

"We do not hold that conspiracy to obstruct or prevent transportation in interstate commerce can in no circumstances be violations of the Sherman Act."

In reply to the argument on the Anti-Racketeering Act, I believe the most important argument that can be made is one involving general principles of statutory construc-
7524 tion. I think your Honor would agree that the universal canon or one of the most elementary canons of statutory construction is that where there is plain meaning in an act, that plain meaning must be given effect. I do not believe that there is any ambiguity in the Anti-Racketeering Act. Nevertheless counsel has adverted at great length to the criminal situation prevailing prior to the enactment of the act. He has speculated about what Congress may have intended. He has discussed not only the act as passed, but the act as it wasn't passed, and finally

he has referred to what someone who was active in securing the enactment of the act was doing prior to the time that he was engaged in securing enactment of the act. I don't believe that the argument as to what Government's counsel was doing before he became connected with the Anti-Racketeering Act has any more relevance than what he had for breakfast the day the act was passed. I believe that the plain meaning of the act was clearly charged by your Honor to the jury, and the jury must be assumed to have found, since they found a verdict of guilty, the elements of the crime as having violated the Anti-Racketeering Act.

I conceive those elements to be two: First, that the 7526
defendants conspired to use wrongfully force or threats of force and fear. That was of course very clearly stated by your Honor, and the verdict must be considered as a determination by the jury that as a matter of fact the defendants were guilty of having done that. I conceive the second element of the crime charged as being the use of force and threats of force in furtherance of a conspiracy to obtain money and then, coming to the exemption, obtaining money, not bona fide wages, but money which could be called the fruits of extortion, money given by the truck operators to induce the defendants to refrain from interfering with the operation of their trucks. Your Honor clearly charged that to the jury. Since that was given to the jury and they were told they must find that
fact in order to convict, and they did convict, it seems to 7527
me perfectly clear that the jury found as a fact that the sums of money which were given by the operators to the defendants were not wages paid by a bona fide employer to a bona fide employee, but were sums of money paid by the operators to induce the defendants to refrain from unlawfully interfering with the operation of their trucks.

Mr. Boudin said that after careful reflection he had come to the conclusion that it couldn't have been the in-

tent of Congress to bring about the result reached in this court room. Well, I say, your Honor, that it is not legally possible to set aside a verdict when the law has been clearly stated to the jury and the jury finds a verdict and when the law has been clearly stated in the precise language of the statute, merely because counsel has a general feeling that Congress did not at the time contemplate the situation. I would not agree, of course, that Congress did not contemplate the situation; but I say that such general considerations and vague feelings cannot set aside a legal and proper verdict.

I have not engaged in elaborate research of the law
7529 that was adverted to, but I have, however, found the two cases cited by looking in the Untied States Code Annotated. I would like to take them up in the inverse order.

The Gramlich case——

The Court: Is that the case before Judge Briggle in Illinois?

Mr. Boudin: It was in Illinois; I don't know the name of the judge.

Mr. Burling: I believe that holds precisely nothing of interest to the case at bar. My understanding of the argument of counsel was that he agreed that the case cast no light on this, but then he adverted to the fact that at some time later the indictment was dismissed; we don't know whether on the Government's motion or what happened, and since we don't know what the considerations
7530 were for dismissal of the indictment it would be useless to speculate; and I suggest that it is useless to discuss that particular case any further.

Coming now to the McGlone case, which was decided in Philadelphia, I cannot agree with counsel's statement of the circumstances in that case. That was a case in which racketeering by, I believe, a lawyer or at any rate an intermediary, and a labor union official was charged; that is, it was charged that a union, or an official of a

union of truck drivers, and an intermediary agreed to settle a strike for a large sum of money. However, it was not determined that the Anti-Racketeering Act exemption prevented the prosecution of the official under the Anti-Racketeering Act. What happened in that case was that the Government's case was put in and then under the Pennsylvania practice there was a demurrer to the evidence, and the demurrer to the evidence, as to the union official, was sustained; but it was clearly stated in the opinion that the reason was that there was no evidence whatever indicating that the union official received any sums of money from the operator of the truck line, that he had any contact with the intermediary who apparently 7532
did receive the money, or that he had done anything except, in fact, to call a strike; but all that case holds is that on one particular set of facts there wasn't enough evidence to permit a jury to find that the union official was a party to the conspiracy, and for that reason I suggest that that case has no bearing whatever to the case at bar.

I stated in my argument on the Sherman Act what I think is the key to the Anti-Racketeering Act as well, and that is that the conspiracy charge was a conspiracy to use force and threats of force to obtain money which was not money paid as wages by a bona fide employer to a bona fide employee, but on the contrary was money paid by the truck operators to induce the defendants to stop interfering with their trucks. I suggest that it is somewhat 7533
similar to the standard form of racket which is a protection racket. That is, the racketeer goes to the victim and says, "You need protection and we will protect you." What the victim needs is protection against the protector himself, and that I believe is the situation in this case. The money paid by the truck operators was to induce the defendants to refrain from interfering with the truck operations.

Since your Honor charged that the jury must find that the sums of money were not bona fide wages and did charge the law by reading to them the statute, it must be assumed that that was found by the jury. I believe that that covers the argument with the exception of the argument on the four counts of the Anti-Racketeering Act indictment. I do not wish to take the position at the present moment, because it is not proper or relevant to do so, but the question as to whether the Court could impose four consecutive sentences on the four counts is not now before the Court. The question is whether there was legal error in permitting the jury to convict on the
7535 four counts.

Now, of course the general conspiracy charged in the four counts of the Anti-Racketeering Act indictment was the same, and it is true that for substantially what happened in that indictment there are four different methods of describing it under the appropriate sections; but a conviction on that form of indictment is not error. I believe that your Honor will agree that it takes place all the time. For example, in bankruptcy fraud indictments there can be an indictment for concealment of assets, for filing false records, and under Section——

The Court: You don't need to go into that, because we have those cases here regularly.

Mr. Burling: Well, that is all I have to say, your Honor. Thank you.

7536 The Court: Now, of course there is no intention of foreclosing anyone from the opportunity to obtain the official opinion in the Apex case and to digest it and to submit a memorandum.

Mr. Boudin: I would like to say, your Honor, in answer to one suggestion or point made by Mr. Burling that what a district attorney or government official did before he introduced that bill is of no relevance, that the reason I refer to it is that that was brought out in the

debate in Congress, as illustrating the kind of crime intended to be met; otherwise of course I would not have referred to it. That was the purpose of my referring to it. In other words, it was referred to in Congress when the subject was under consideration as illustrating the kind of crime that was intended to be met by the bill that Mr. Keenan drew, and that was the point I was making before your Honor. I wasn't referring to it idly. It illustrates the thing that was not only in Mr. Keenan's mind but in their minds as well.

The Court: You don't pay as much attention to the debates on the floor as you do the hearings before the committee, do you? 7538

Mr. Boudin: Yes.

The Court: You do?

Mr. Boudin: I might say, your Honor, unfortunately because of the hysteria then prevailing this bill was not debated in Congress at all.

The Court: Many bills are debated in committee.

Mr. Boudin: In the committee report there was only one page of debate. After it passed the House somebody woke up to the fact that it might affect labor unions. Somebody made a motion to reconsider it and to give an opportunity to labor unions to appear, and Mr. Green and counsel appeared and said, "Of course, we are not interested in racketeering." That was the only thing that was ever mentioned in Congress in the debate on the subject, because everybody wants to put these high-powered racketeers behind the bars. The lack of debate and the fact that it was adopted that way emphasizes the fact that it was not intended to meet a situation such as presented in this case. 7539

The Court: How long do you want to prepare a memorandum in the Apex case?

Mr. Boudin: It so happens unfortunately that I couldn't do anything this week. I have the National

Lawyers Guild Convention to attend tomorrow. If your Honor would give us until next Friday or to the day of sentence.

The Court: When do you think I am going to consider your memorandum?

Mr. Boudin: I don't suppose there is any great hurry about the sentence. Let us say next Wednesday?

The Court: Well, I want to give the Untied States Attorney an opportunity to reply to it.

Mr. Boudin: Make it Tuesday then, your Honor?

The Court: If you will serve him with a copy on Tues-
7541 day, I will have it in my hands on Thursday.

Mr. Boudin: I couldn't work on it before Monday.

The Court: Well, you are very fortunate, but I will have to.

New York, June 7, 1940.
10.30 A. M.

Present:

THE COURT,
MR. BURLING,
MR. MURRAY,
MR. MAGUIRE,
MR. BOUDIN.

7542 (The roll of the defendants was called and all were present.)

The Court: Before this trial started on April 15th I announced I would not be available on June 6th; and when I left here on Wednesday I had not received the defendants' brief on the Apex case; and I understood at that time that very few of the defendants would be reported upon this morning by the probation officers. As a matter of fact, I have received only three reports, and I

have no disposition to dispose of this case in sections. Therefore I shall postpone the sentence to await the report of the probation officer upon the remaining defendants as to whom a report was requested.

When, may I ask the representative of the probation officer, will that information be available?

Mr. Burling: I do not believe he is present in court, your Honor, but they informed me that they would ask for one week.

The Court: What about the brief?

Mr. Boudin: If your Honor pleases, the brief was served on Wednesday. I misunderstood. I thought we would file that with your Honor together with their brief. I 7544
filed it yesterday. I served it on the other side, that is on the Government, on Wednesday and in your Honor's office——

The Court: I thought I made it very plain that your brief was to be in my hands on Wednesday.

Mr. Boudin: I misunderstood that. It was served on the Government on Wednesday, and yesterday it was sent down to your Honor's secretary.

The Court: I said I would not be here yesterday, so it was no avail to me yesterday.

Mr. Burling: If your Honor please, the brief for the Government is also late. I was late two days in receiving it, one day due to the fact that it was not promptly sent to me and one day due to the fact that it was not served on 7545
me on Tuesday, as your Honor directed, but on Wednesday.

I will have the reply brief ready to submit to your Honor today, but I would like to ask the direction of the Court, if I may as to one point.

Full oral argument was had on the motions in arrest of judgment on May 28th, and at that time motions as to both the Sherman Act indictment and the Anti-Racketeering Act indictment were argued; and as I under-

stood it, the reason that briefs were to be considered by the Court was that neither counsel for the defendants nor I had read the opinion of the Supreme Court in the Apex case; and the briefs were to be liimted to the application of the Apex case, if any, to the case at bar.

Now, I observed in Mr. Boudin's brief that he has further argued that the Anti-Racketeering Act does not apply to the case at bar, or if it is construed so as to apply then it is unconstitutional.

The point as to the construction was not within the scope of the briefs, and I ask your Honor whether you wish to consider or wish to receive further briefs on that point
7547 from the Government, because I do not wish to submit briefs on points that have already been determined.

The Court: If you want to reply in your brief on that point you may do so. It was my intention that the briefs were to be limited to the analysis of the Apex case. I thought that otherwise the case had been fully argued.

Mr. Burling: Your Honor, I have no desire to reply to the brief; and there is nothing else that we have not said repeatedly in oral argument, so it would be a mere repetition of the position the Governmnet has taken.

Mr. Boudin: I would like to say to your Honor that one of the reasons I treated the briefs as I did is that I did not want to be misunderstood that we had not raised the problem of constitutionality of the act in this Court.
7548 I never argued constitutionality at length, because I assumed that it was constitutional, because I had interpreted it in a certain way, and as I interpreted it it is probably constitutional. However, in view of the comment of the Court on the verdict of the jury, apparently the act is being given an interpretation which makes it unconstitutional. I wanted to make sure that our point was properly raised.

The Court: Well, you cannot raise that point by your brief. It will depend upon your record.

Mr. Boudin: All right. If your Honor thinks it should be raised, I now, if your Honor please, make the additional motion to set aside the verdict of the jury in arrest of judgment in the conviction under the Anti-Racketeering Act on the ground that that act, if applied to the case at bar, would be unconstitutional, and as applied, it is unconstitutional.

The Court: I will take that under consideration; but under the rules as adopted by the Supreme Court, it is too late for that motion.

Mr. Boudin: Your Honor, that can be raised at any time in this Court.

The Court: I will take it under advisement, but I think 7550
it is too late.

Mr. Boudin: Will your Honor take a memorandum on that point?

The Court: No; I do not need that.

Mr. Burling: Does your Honor desire a memorandum from the Government on the constitutionality of the act?

The Court: No.

Mr. Burling: I do not believe it is necessary.

The Court: I will read what Mr. Boudin has to say and then I will make my own determination.

I will set the sentence of this case for June 18, because I want time, when I receive the probation report, to carefully consider it.

Mr. Murray: I might say to your Honor that I am to start a murder case on the 17th. Would it be possible to 7551
set the sentence for a week from today?

The Court: No. I can set it for the 13th.

Mr. Murray: That is all right.

The Court: All right, the 13th at 10 o'clock in this room. And the defendants will be continued on bail in the meantime.

(Adjourned to June 13, 1940, at 10 o'clock A. M., in room 706).

New York, June 13, 1940,
10 A. M.

(The roll was called.)

The Court: Have you called the roll of the defendants?

The Clerk: I have called the roll.

The Court: Are they all present?

The Clerk: Yes.

The Court: In this case the probation officer has been submitting to me his reports as he concluded them, and the larger number of them only came into my hands yesterday and the day before; and the engagement in this particular part of the Court has been such that I have
7553 been unable to examine these reports; and I not only desire to examine them, but I want to analyze them. I feel under the circumstances, not only in justice to the Court, but also in justice to the defendants that an adjournment of this case is required for that purpose; and if there be no objection, I will postpone the imposition of sentence until next Wednesday morning in this room at 10 o'clock.

Does anyone object?

Mr. Marks: No objection on the part of the Government.

Mr. Maguire: No objection on the part of the defendants.

The Court: The defendants will, of course, be continued
7554 on bail, and they are now specifically requested to be here at that time and to be prompt, because it is the desire of the Court to dispose of this case and then to continue on with the other business before it; so we will stand in recess until half-past ten this morning, and the defendants are at liberty to leave.

(Adjourned to June 19, 1940, at 10 A. M.)

New York, June 19, 1940,
10 A. M.

Present:

MR. CAHILL,
MR. ENNIS,
MR. MARKS,
MR. BURLING, for the Government.
MR. MAGUIRE,
MR. BOUDIN,
MR. MURRAY, for the defendants.

The Court: Call the roll.

(The clerk called the roll of the defendants and each answered present.) 7556

The Court: Is there anything you desire to say, Mr. Cahill?

Mr. Cahill: Merely to give to the Court the recommendations of the Government.

The Court: I don't think I need those.

Mr. Boudin: On glancing at the record, page 3071 which shows the motions, I notice the words "for a new trial" are omitted. I don't know whether I omitted them or the Court reporter did.

The Court: I have no objection to them being inserted.

Mr. Boudin: It should read, "to set aside the verdict of the jury, in arrest of judgment and for a new trial."

The Court: Very well.

After a trial which occupied six weeks, the defendants, 7557
Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, an unincorporated association, and twenty-six individual defendants alleged to have been members thereof, were convicted upon the single count contained in an indictment filed May 31, 1938, under the Sherman Anti-Trust Act, and upon one or more of the four counts contained in an indictment also filed May 31, 1938, under the so-called

Anti-Racketeering Act. Motions were made on behalf of all defendants to set aside the verdict and for a new trial and in arrest of judgment and decision was reserved thereon to enable counsel to obtain and analyze the record and make further arguments and submit briefs, specifically upon the application of the Apex Hosiery case decided by the United States Supreme Court after the verdict and before the motions were heard, at which time however a full text of the opinion in that case had not yet been made available.

After having carefully considered the subject matter and the arguments of counsel and the briefs, all of the
7559 motions are hereby denied.

Before the commencement of the trial, I stated very frankly to Mr. Cahill, that in my practice before coming on the bench, I had represented a number of labor organizations, and that if he felt that that would be any embarrassment to the Government, I would be very glad to retire voluntarily from this case and permit someone else to try it. I said at the same time, however, that I would not be in any way influenced by my previous connection with any litigation on behalf of any labor organization in my presiding over and making a disposition of this case so far as the Court was concerned; and I do not feel that it can be truthfully said that the defendants have not had a fair trial.

Some there are who I believe were actuated by an over-
7560 enthusiastic desire to be cooperative in their misguided efforts to advance what they believed to be the objects and purposes of their union, but in so doing, as the jury found, they went beyond legitimate bounds. Othere defendants were more deliberate in their determination and reckless in regard to what they did and threw aside all inhibition.

I have taken all these matters into consideration together with the report of the probation officer, whose time has been twice extended in order that he might make a

complete and thorough investigation and report on the defendants. I have also taken into account the criminal records of those defendants who have heretofore been convicted of other crimes, and I now make the following disposition of these cases:

Mr. Murray: As your Honor knows, I have appeared for the individual defendants except those represented by Mr. Boudin. Without your Honor going into each defendant's pedigree and his conduct in this case for which he stands convicted, I would like to ask your Honor to please remember that these men, at least 90 per cent. of them, were really working men. They have wives and children and dependents, and this conviction undoubtedly takes 7562
away from them their means of livelihood, because, as I am informed, their licenses to drive trucks in many instances have already been taken away from them. Those who apply for a license hereafter will have to put in their application that they have been convicted of a felony in this Court. I know that men who have employed them have declined to employ them any further because they say they have been convicted of extortion. There is nothing that the union can do about that situation, because if the employer takes that attitude it probably will be found on arbitration that he is perfectly justified in refusing to employ them further. So, your Honor, that is the sum and substance of it. These men are without employment and no one knows better than your Honor what a terribly difficult task it is now for a man to get a job. Even a man with 7563
a clean record cannot get more than a day of work a week.

And your Honor must remember that there were many, many members of this union and a great number of them only could have been employed part time, and the terrible economic distress adds to this condition.

The jury has found that some of these men exceeded the bounds of their rights. I cannot deny that. But, your Honor, it was an effort to get work, and your Honor knows the terrible days these are, particularly for young men.

These are working men before your Honor who were trying to get a livelihood. They say they were paid $9.43 for inconsequential work; but, your Honor must remember some of these men only got one day's work a week, and it was a question of getting bread and butter for their families.

This, as I understand it, is the first anti-racketeering conviction in the United States. The Government prevails. They stand convicted as felons, with a black future in the offing; and I ask your Honor, in your Honor's judgment, to remember that and be merciful to these men.

Mr. Boudin: If your Honor please, I think at this time
7565 I will take an exception to your Honor's overruling our motions, before your Honor actually proceeds to sentencing, and I do take that exception.

And also on behalf of the defendants, I want to join in the appeal of Mr. Murray on behalf of all of the defendants. While I now represent only one, and I really represent the union primarily, I do feel that in the course of this trial, I have become acquainted with these defendants and I can say at least as to those I have talked to and met, that they are honest working men trying to make a living. Specifically of my client Cahill, who I think is a specimen of the rest, he is more fortunate in that he has no record against him. I am not familiar with the records, but outside of some specific prosecutions, so far as this case is concerned, these men were all trying to earn a living. I
7566 don't recall, except in some sporadic instances, where somebody may have refused to work. My individual client is a married man who has always worked for a living, and is now working for one of the complainants here; and, so far as the union is concerned, I think the record shows that certainly the union has not approved of or encouraged these practices and there is no evidence of their approval of them.

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Mr. Maguire: Probably more than anyone else, I have lived with this over-the-road truckman situation, for more than six years, and in that time I have with them struggled to try and clear up the evils that resulted from a new industry which was uncontrolled and unregulated.

Last year, in July, after months and months of negotiations with the Government, something was worked out, a decree. And prior to the entry of the decree, and as a vital part of the decree, it was contemplated that there should be a forum and machinery set up which would enable the adjustment of all the problems arising in this field. The limitation of hours and the regulations from the I.C.C. did not become effective until 1939, despite the fact that they had been conducting hearings theretofore in 1936, 1937 and 1938.

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Last July, after three or four months the efforts were concluded, at least the union signed a document under which there would have been set up an impartial chairman of this industry. I came down the day the decree was entered with the agreement which I have in my hand actually executed by the union. As other parties to the agreement it was contemplated that there would be four trade associations. Three of the trade associations were willing then and there to sign that agreement. On the very morning that the decree was entered one association said they did not like the form of the agreement despite the fact that they had authorized an attorney to negotiate with us for months prior to that time.

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Now subsequently, and only as a result of the inability of the employers in this particular line, all this arbitration machinery and this impartial chairmanship failed At that time and at this time, as the only sensible way of ironing out these difficulties that are arising through misunderstanding, the union today is ready and was a year ago to enter into that machinery.

The Court: That decree was vacated.

Mr. Maguire: Yes, sir, it was. We were not able to put that into effect because one employer association blocked us.

The Court: I am sorry that the agreement was not consummated. I am on record more than seven years ago, when advising labor unions as an advocate of entering into arbitration contracts on the part of the union with employers pursuant to which strikes would be averted pending arbitration, the arbitration to be carried on by an impartial arbitrator appointed on each side and a third impartial arbitrator to be appointed by the President of
7571 the United States from among the Judges of the Federal Judiciary. And I made that suggestion long before I ever expected to be a member of the Federal Judiciary myself. And I have followed very carefully what has transpired, particularly in New Zealand, where I think the labor causes had advanced their welfare as far, if not further, than in any country that I know of. And I am glad you were on this track when this agreement was prepared and the consent decree entered. I was a little surprised when that consent decree was vacated and the case brought to trial on the indictment which had been theretofore filed, but that was the situation which came to me as a condition and not a theory, and I had to act accordingly.

Now, whether I impose any sentences at all in this case
7572 or not, the convictions are there. I have nothing to do with them any more than to have considered and denied as I thought I was impelled to do according to law the motions to vacate and set aside the verdict of the jury in this case. I have taken into account, however, the fact that this is the first case of its character to result in conviction under the provisions of the Anti-Racketeering Act, and if it were not the sentences which I have determined to impose would be much more severe than you will find they are to be.

Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, I fine $2,000 on each count of the two indictments, making a total of $10,000.

Upon George Bagley, I impose a sentence under the Sherman Act indictment of three months in the House of Detention, and at the termination of that sentence, a further sentence will begin on the Anti-Racketeering Act indictment of one year on the first and second counts, to run concurrently, but that sentence will be suspended, and the defendant will be placed on probation for three years.

Upon Joseph Bender, a sentence under the Sherman Act of six months in the House of Detention, and one year 7574
to follow upon the first and second counts of the anti-racketeering indictment, to run concurrently, the sentence to be suspended and probation for a period of three years.

Upon Michael Cahill, three months in the House of Detention to be followed by a sentence of one year upon each of the first two counts of the anti-racketeering indictment, to run concurrently; sentence to be suspended, and probation for a period of three years.

Upon William Campbell, two years on count 1 of the Anti-Racketeering Act in a penitentiary to be designated by the United States Attorney General, and to be followed by a sentence of one year upon the indictment under the Sherman Anti-Trust Act, and one year upon counts 2, 3 and 4 of the Anti-Racketeering Act, to run concurrently as to one another. The sentence to be suspended and the 7575
defendant to be placed on probation for a period of three years.

Joseph Deegan: This defendant was convicted of only one count under the Anti-Racketeering Act. I impose a sentence under the Sherman Act indictment of one month in the House of Detention to be followed by a sentence of one year under the Anti-Racketeering Act indictment. Sentence to be suspended upon that indictment and a probationary period of three years.

Robert Dillon: One year and one day upon count 1 of the Anti-Racketeering Act in a penitentiary to be designated by the United States Attorney General, to be followed by a sentence of one year on the Sherman Act indictment and one year upon the Second, Third and Fourth counts of the Anti-Racketeering Act indictment, to run concurrently with one another. Sentence to be suspended. Three years probation.

Frank Downs: I impose a sentence of one year under the Sherman Anti-Trust Act in an institution to be designated by the United States Attorney General. That will be followed by a sentence of one year upon each of the
7577 four counts of the Anti-Racketeering Act indictment to run concurrently; sentence to be suspended; probation for a period of three years.

Austin Furey: Two years on count 1 of the Anti-Racketeering Act indictment in a penitentiary to be designated by the United States Attorney General, to be followed by one year on the indictment under the Sherman Anti-Trust Act, and one year upon counts 2, 3 and 4 of the Anti-Racketeering Act, to run concurrently; sentence to be suspended and a probationary period of three years.

John Gaughan: Sentence of one month in the House of Detention under the Sherman Anti-Trust Act indictment, to be followed by one year on counts 1 and 2 of the Anti-Racketeering Act, to run concurrently with one another; sentence to be suspended; three years probation.

7578 John Horan: Three months in the House of Detention upon the Sherman Act indictment, and one year on the first count of the Anti-Racketeering indictment, the only one upon which he was found guilty, to follow; sentence to be suspended; probation for three years.

Andy Jakakas: Six months in the House of Detention on the Sherman Act indictment and one year on the first count of the Anti-Racketeering indictment, the only one upon which he was convicted, to follow; sentence suspended; probation three years.

Abraham Klenofsky: Six months in the House of Detention on the Sherman Act indictment and one year upon each of the four counts of the Anti-Racketeering indictment to follow, and to run concurrently with each other; sentence to be suspended; probation for a period of three years.

Leonard La Marne: Three months in the House of Detention on the Sherman Act indictment and one year on the first count of the anti-racketeering indictment, the only one upon which he was found guilty, to follow; sentence to be suspended; probation three years.

Manuel Magan: One year on the Sherman Anti-Trust Act indictment and one year on the first and second counts of the anti-racketeering indictment, all to be concurrent with each other; sentence to be suspended, and probation for a period of three years. 7580

James Murphy: Three months in the House of Detention on the Sherman Anti-Trust indictment, and one year on counts 1 and 2 of the anti-racketeering indictment to follow, those two sentences to run concurrently and to be suspended; probation for a period of three years.

George Needelmann: One year and one day on count 1 of the Anti-Racketeering Act indictment in a penitentiary to be designated by the United States Attorney General, to be followed by a sentence of one year under the Sherman Anti-Trust Act indictment, and one year on counts 2, 3 and 4 of the anti-racketeering indictment; those sentences to be concurrent with one another; sentence suspended; 7581 probation for three years.

Bernard L. Randazzo: Three months in the House of Detention under the Sherman Anti-Trust Act indictment to be followed by one year upon each of the four counts of the anti-racketeering indictment, to run concurrently with each other; sentence to be suspended; probation for three years.

Samuel Reichlef: Six months in the House of Detention under the Sherman Anti-Trust Act indictment and one year upon each of the four counts of the Anti-Racketeering Act indictment to be concurrent with each other, to follow the previous sentence, and this sentence to be suspended; probation for three years.

Morris Reichler: One year under the Sherman Act indictment and one year under the first count of the anti-racketeering indictment, to run concurrently; sentence to be suspended on both and the defendant placed on probation for a period of three years.

Thomas Sharkey: One month in the House of Detention on the Sherman Act indictment; one year on the first
7583 count of the anti-racketeering indictment to follow. Sentence suspended; probation for a period of three years.

William Simpson: Two months in the House of Detention on the Sherman Anti-Trust indictment and one year on each of the four counts of the anti-racketeering indictment to follow, to run concurrently; sentence to be suspended; probation for a period of three years.

Tony Venditti: Two months in the House of Detention on the indictment under the Sherman Act, and one year to follow upon each of the four counts of the Anti-Racketeering Act, to run concurrently. Sentence to be suspended; probation for three years.

Peter Waskiewicz: One year on the Sherman Anti-Trust Act indictment and one year on the first count of
7584 the anti-racketeering indictment, to run concurrently; sentence to be suspended on both. Probation three years.

Edward Weinheimer: Eighteen months on the first count of the Anti-Racketeering Act indictment in an institution to be designated by the Attorney General, and that of course will be a penitentiary, to be followed by one year on the indictment under the Sherman Act and one year on counts 2, 3 and 4 of the Anti-Racketeering Act

indictment; those four sentences to follow the previous one, to be concurrent, and to be suspended, and probation for three years.

John Weinheimer: Six months in the House of Detention on the indictment under the Sherman Anti-Trust Act and one year to follow on the first count of the Anti-Racketeering Act indictment: that sentence to be suspended and the defendant to be placed on probation for a period of three years.

Harry Zollinger: Seven months in the House of Detention upon the indictment under the Sherman Anti-Trust Act and one year to follow upon the first count of the Anti-Racketeering indictment. That sentence to be suspended and the defendant to be placed on probation for a period of three years. 7586

In connection with the sentence of Zollinger, I wish to say that an affidavit was submitted to me verified by a person who was a witness in this case recanting certain of the testimony given by him against the defendant Zollinger. I have had the affidavit investigated and I am satisfied that in several particulars it is untrue, and I am also satisfied that the person who made the affidavit was induced to do so by threats made by Zollinger to him after the conviction in this case, and I have very serious doubts in my mind whether I have been adequate so far as the Government is concerned in advancing the sentence upon Zollinger to seven months.

Now while I have fixed sentence upon all of the defendants so far as the Anti-Racketeering Act indictment is concerned, where they have been suspended, at one year, I have done that because the sentence that I could impose on the individual defendants under the Sherman Anti-Trust Act is only one year, and it did not seem logical to me that a sentence even if suspended upon one indictment should be for a period that could not be served in a penitentiary and another for a longer period, that must be 7587

served in a penitentiary should be concurrently imposed. But it is not a matter of any great consequence what the sentence is upon those counts of the indictment where it is suspended, because if the defendants live up to the conditions of probation, and the probation in each instance is for a period of three years, that ends the matter. But if there is any defendant who violates his probation and is brought in before me or any other Judge of this Court for violation of that probation, the Court is not bound by the sentence I have imposed of one year, but may in those circumstances consider any sentence which might have been imposed in the first instance, which under the Anti-
7589 Racketeering Act is a maximum of ten years. I mention that, however, in order that the defendants will understand that while the sentence which I have imposed and suspended in those instances is only one year, the purpose of it was to put them under probation, and the violation of the probation may subject them to the infliction of a much more severe sentence than one year if at any time they are brought before this Court or any Judge of this Court and found guilty of a violation of the terms of that probation.

Now, I want to say this in conclusion: We are living in very serious times to-day, and there is no greater essential on the part of the Court in discharging its duty than to warn all America that this a law-abiding country and that every one in this country must be law-abiding in order
7590 to give effect to the objects and the purposes to be attained by the Government under the constitution and its laws.

I could not, in the face of those circumstances, be more lenient than I have been, and I have been more lenient than I would have been had not this been the first case of its character brought in this Court under the statute in question.

Mr. Maguire: In the matter of the sentence of Downs, your Honor sentenced him to one year under the Sherman Act indictment.

The Court: Yes.

Mr. Maguire: Of course, I don't know what facts may have guided your Honor in making your determination as to this sentence, and I may err, but it seems to me that Downs was one of the minor figures in this case.

The Court: I am guided by my recollection of the testimony plus the information disclosed to me in the reports of the probation officer.

If you desire to bring any specific facts to my attention on an application for reduction of sentence, I will consider them. There is no disposiiton on my part to close the door to anybody obtaining consideration if an error has been made. I am not seeking to encourage anybody to make 7592
any application for reduction, but I want to make it perfectly clear that I am not disposed to close my ears if anyone can indicate to me that I have erred in the disposition which I have made in respect to any defendant in this case.

Now on the question of appeal. I assume that the defendants, if any of them intend to make an appeal, desire to make an application for bail.

Mr. Murray: May we do that now?

The Court: I think it would be proper to file the notice of appeal and then make your application. Is there any objection on the part of the Government to the continuance of these defendants on the existing bail?

Mr. Cahill: The Government feels in the case of Dillon, the bail should be increased to $3500.

Mr. Murray: I have made arrangements for bail and 7593
we will have it by 4 o'clock.

The Court: Then we will take that up at 4 o'clock this afternoon.

I will fix a date for these defendants to surrender now. Within what time do you feel you will file the notice of appeal?

Mr. Boudin: I should say, if your Honor would make the surrender a week from today, we could perfect our appeal in the meantime.

The Court: Very well, 10 o'clock next Wednesday morning and 4 o'clock this afternoon as to Dillon. Surrender in this room on the 26th of June at 10 o'clock in the morning.

New York, June 26, 1940,
10 A. M.

The Court: There isn't anything for me to do on the surrender of these individuals, except I want to inquire in the case of those where they are to have additional bail.

Mr. Marks: There is only one.

7595 The Court: In the case of Downs Mr. Murray raised the point the other day that he thought the sentence of Downs was excessive. Well, I have compared the probation report in the case of Downs with some of the other defendants who received a lesser sentence, and I have made some independent inquiry, and I have come to the conclusion that it is excessive. So far as he is concerned I am going to amend the judgment that has been entered here and reduce his sentence to four months instead of one year.

I also sent notice to all counsel fixing July 1st as to the date of hearing on the question as to how much time will be allowed for the purposes of preparing the record. My own thought about it is that it should be October 1st.

7596 Mr. Marks: Mr. Boudin submitted an order this morning.

The Court: I got the notice from the clerk on the 25th and I thought to make it returnable in July would be too short notice. On the other hand I thought some counsel might be going out of town for the holiday. If you want to dispose of it at any time earlier than the 1st of July it makes no difference to me.

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Mr. Boudin: I have no objection to October 1st.

The Court: I don't think it makes any difference. I had figured on giving you ninety days. If it is put for September 24th you cannot get on the October Term anyway. We will make it October 1st.

Submit your order and I will consider that notice of the hearing for Monday has been disposed of.

I am granting bail in all cases at the amount in which they are held in bail now, except in the case of Dillon and in that case I am increasing the bail.

Mr. Boudin: He has already arranged his bail.

The Court: You can arrange now your bail on appeal.

(Addressing the defendant Downs:) I am going to reduce your sentence from one year to four months. 7598

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